

SB165_End Auto Charging_FAV.pdf

Uploaded by: Alice Wilkerson

Position: FAV



**Testimony in Support of Senate Bill 165
Juvenile Court – Jurisdiction
Ending Automatic Charging of Youth as Adults
January 27, 2022
Favorable**

Dear Chairman Smith and Honorable Members of the Committee:

On behalf of Strong Future Maryland, we write in strong support of Senate Bill 165. Strong Future Maryland works to advance bold, progressive policy changes to address systemic inequality and promote a sustainable, just and prosperous economic future for all Marylanders. We urge you to support this legislation as part of our efforts to address discriminatory practices leading to the overincarceration of Black youth and in the state of Maryland and to ensure that everyone in our justice system is treated fairly, equitably, and the kids are provided with rehabilitative services that will help them succeed.

In Maryland, youth as young as 14 can be tried in adult court depending on what charge a police officer decides to levy against them. When young people are automatically charged in adult court, they are more likely to re-offend, sooner, with more violent crime than children who are charged in juvenile court. This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried in adult court reflect and reinforce the racial inequities that characterize the justice system in the United States.

The Justice System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the Maryland court system.¹ Rampant racial inequities are evident in the way youth of color are disciplined in school, policed and

¹ Hagan J, Shedd C, Payne MR. Race, ethnicity, and youth perceptions of criminal injustice. *American Sociological Review*. 2005;70(3):381-407. See also, DJS Data Resource Guide FY2021, 241.
https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

arrested², detained, sentenced, and incarcerated.³ These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than white youth charged with similar offenses.⁴ Youth of color are more likely to be tried as adults than white youth, even when being charged with similar crimes. In Maryland between 2017-2019, 93% of juveniles tried as adults were youth of color; 80% were Black.⁵

“Tough on Crime” Laws Criminalize Youth and Make Us Less Safe

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

We can and must treat our children better. Maryland should join the 26 other states who have passed laws to **treat kids like kids and end automatic charging**. Strong Future Maryland urges this committee to issue a favorable report on SB 165.

² Monroe CR. Why Are “Bad Boys” always Black?: Causes of Disproportionality in School Discipline and Recommendations for Change. *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*. 2005;79(1):45-50. doi:10.3200/TCHS.79.1.45-50

³ <https://goccp.maryland.gov/wp-content/uploads/juvenile-dmc-201101.pdf>

⁴ Soler M. Health issues for adolescents in the justice system. *Journal of Adolescent Health*. 2002;31(6):321–333.

⁵ Vera Institute, Preliminary Findings: Youth Charged as Adults in Maryland, Dec. 10, 2020.

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>.

MAJR_SUP_SB0165_22RS.pdf

Uploaded by: Bill Carlson

Position: FAV

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



To: Chair Will Smith and Senate Judicial Proceedings Committee Members,
From: Bill Carlson, MAJR executive committee

January 25, 2022

The Maryland Alliance for Justice Reform (MAJR - www.ma4jr.org) strongly supports HB 0294 / SB 0165, Juvenile Court – Jurisdiction, a bill which will remove the harmful and unnecessary practice of forcing many juvenile cases to be adjudicated in adult court simply because of the charges filed. After eliminating these provisions courts can still decide, based on the individual facts of a case, that it is more appropriate for a particular youthful offender be tried in adult court.

The juvenile justice system is designed to handle the adjudication and treatment of youth. This is especially important as it has been recognized (including by the US Supreme Court) that "children are constitutionally different from adults in levels of their culpability"[Montgomery v. Louisiana, 2016]. In addition, a 2007 DOJ and CDC study found that transferring youth to an adult criminal justice system does not protect the community and substantially increases the likelihood that youth will re-offend.

In many cases, adjudicating a minor's alleged crimes in adult court is appropriate when the juvenile court can see that the individual is not amenable to treatment in the Juvenile Justice systems based on facts and factors presented. What is not appropriate is for the law to prejudge this decision for entire classes of crimes and ages of youth, statutorily requiring their hearing in adult court. Unfortunately, this is exactly what current Maryland law provides.

While it is possible under current law for an offender to seek a "Reverse Waiver" to return a juvenile's adjudication in these cases back to juvenile court, this is not an acceptable approach for two main reasons. First, the standard for "reverse waiver" may be unrelated to the juvenile's amenability for treatment but rather may be decided on the undefined "interest of the child and society" [Section 4-202(b)(3)]. Second, it should be noted that cases which are statutorily forced into the adult system are common, representing about 80% of all cases where a child stands trial in adult court.

HB 0294 / SB 0165 repairs these problems by simply removing the provision of law which cause certain cases to be forced into adult court without an individualized determination by the juvenile court. It also makes several conforming changes in other portions of the code but in no way eliminates the option for a juvenile court to transfer a case to adult court after due consideration of the facts of the case. For the above reasons MAJR strongly supports this bill.

PLEASE NOTE:

- 1) A digital version of this written testimony is available at <https://www.ma4jr.org/juvenile-court-jurisdiction/> with hyperlinks to all factual statements, surveys and studies referenced herein.

SB 165_YEJ_Fav.pdf

Uploaded by: Brianna Drayton

Position: FAV

Testimony in Support of Senate Bill 165 (Favorable)
Juvenile Court Jurisdiction

To: Senator William C. Smith Jr. and the Members of the Judicial Proceedings Committee

From: Brianna Drayton, Student Attorney, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law. 500 W Baltimore St. Baltimore, MD 21201 (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar).

Date: January 22, 2022

I am a student attorney in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, and other means, as well as individuals who are serving life sentences for crimes they committed when they were children (“juvenile lifers”) and who are now eligible to be considered for parole. I write in support of Senate Bill 165, which, if passed, would end the unjust and scientifically unsound practice of automatically charging Maryland’s children in adult court.

In our state, children who commit specified offenses, including some misdemeanors, are automatically charged in the adult criminal legal system. The number of children who have been charged as adults has significantly increased since 2017.¹ Nationally, “only Alabama sends more of its kids (on a per capita basis) into adult courts than does Maryland”² In 2019, nearly as many of Maryland’s children were charged in adult court than children in Arizona, California, Pennsylvania, and Massachusetts combined, even though Maryland’s population is substantially lower than *each* of these states.³

¹ In 2017, 683 children were charged as adults, and jumped to 919 and 949 in 2018 and 2019, respectively. MARYLAND GOVERNOR’S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES, JUVENILES CHARGED AS ADULTS IN MARYLAND (7/1/2019 - 12/31/2019) at 8, (Jun. 30, 2020). <http://goccp.maryland.gov/wp-content/uploads/juveniles-charged-as-adults-201907-201912.pdf>. In the first half of 2020 – part of which covered the first months of the COVID-19 pandemic – 396 children were charged as adults. MARYLAND GOVERNOR’S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES, JUVENILES CHARGED AS ADULTS IN MARYLAND (1/1/2020 – 6/30/2020 at 4 (Jan 8, 2021), [http://dlslibrary.state.md.us/publications/Exec/GOCPYVS/CP10-219\(b\)\(6\)_2020\(12\).pdf](http://dlslibrary.state.md.us/publications/Exec/GOCPYVS/CP10-219(b)(6)_2020(12).pdf).

² Sen. William C. Smith, Jr., *Sen. Smith: Maryland’s Youth are Ready for Reform*, MARYLAND MATTERS, Sept. 2, 2021, <https://www.marylandmatters.org/2021/09/02/sen-smith-marylands-youth-are-ready-for-reform/>.

³ GEN. ASSEMBLY OF MARYLAND, DEPT OF LEG. SERV., <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Kids-Sent-to-Adult-Court.pdf> (last visited Nov. 14, 2021).

Maryland's practice of charging children in adult court is a direct contributor to a criminal legal system that is plagued with racial disparities. Maryland has the most racially disproportionate prison population in the United States. While only 31% of the state's population is Black, over 70% of Maryland's prison population is Black.⁴

These same shocking disparities are found in the population of Maryland's children who are charged as adults. Between 2013 and 2020, 80% of Maryland's children so charged were Black.⁵ Thus, ending the automatic charging of children in adult court is a matter of racial justice in Maryland. Indeed, it would be a significant step towards addressing these racial disparities.

Unlike Maryland's adult criminal legal system, the overarching purpose and goal of Maryland's juvenile justice system is to rehabilitate children. The juvenile court process, as well as the punishment that follows, is supposed to address the child's unique needs, hold them accountable for their behaviors, and help implement the necessary supports to allow the child the opportunity to learn, grow, and thrive. In stark contrast, the adult criminal legal system provides very little, if any, opportunity for rehabilitation and, indeed, often harms children irreparably.

Children should not be automatically charged as adults. One reason is that the adolescent brain is different from the adult brain. The prefrontal cortex – which is the part of the brain that allows a person to make rational, deliberative decisions – does not fully develop until they reach 25 years of age.⁶ A fully developed prefrontal cortex allows *adults* to fully understand the long-term consequences of their actions. Specifically, it allows *adults* to: 1) delay and reflect; 2) consider all available options; 3) contemplate risks and consequences; and 4) have situational awareness.⁷ In stark contrast, children are more susceptible to impulsivity, sensation seeking, peer pressure, and risky behavior. The brain science has proved that children lack the ability to contemplate and understand the long-term consequences of their actions.

Senate Bill 165 is an important step towards aligning Maryland's criminal legal system with the brain science, addressing the over-criminalization of children, and reducing the racial disparities that plague the criminal legal system. For these reasons, the Youth, Education, and Justice Clinic asks for a favorable report on this bill.

⁴ JUSTICE POLICY INSTITUTE, RETHINKING APPROACHES OF BLACK YOUNG ADULTS IN MARYLAND 3 (Nov. 2019), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

⁵ Hannah Gaskill, *Amid Juvenile Justice Reform Push, Commission Examines Maryland's High Rate of Trying Young People as Adults*, MARYLAND MATTERS, (July 21, 2021), <https://www.marylandmatters.org/2021/07/21/amid-juvenile-justice-reform-push-commission-examines-marylands-high-rate-of-trying-young-people-as-adults/>.

⁶ Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT 449, 453 (2013), [NDT-39776-maturation-of-the-adolescent-brain \(dovepress.com\)](https://doi.org/10.1007/s12287-013-0276-1).

⁷ Morgan Tyler, *Understanding the Adolescent Brain and Legal Culpability*, AMERICAN BAR ASS'N (Aug. 1, 2015), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonlinepr/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/

This written testimony is submitted on behalf of the Youth, Education and Justice Clinic at the University of Maryland Carey School of Law and not on behalf of the School of Law or University of Maryland, Baltimore.

SB165_Cichowski_fav.pdf

Uploaded by: Carol Cichowski

Position: FAV



Montgomery County Commission on Juvenile Justice

Senate Bill 165 – Juvenile Court – Jurisdiction Judicial Proceedings Committee – January 27, 2022 FAVORABLE

Thank you for the opportunity to submit written testimony on behalf of the Montgomery County Commission on Juvenile Justice (MC CJJ) on Senate Bill 165.

MC CJJ was established to advise the Montgomery County Executive, County Council and the Juvenile Court on matters concerning juvenile justice. Our work includes gathering and disseminating information from public and private agencies serving youth, monitoring juvenile justice programs and services, visiting facilities, closely following relevant State and local legislation, and making recommendations regarding juvenile needs. MC CJJ is composed of appointed, volunteer citizen members, and agency members that include the Child Welfare Services Program, the Montgomery County State’s Attorney’s Office, the Office of the Public Defender, the Montgomery County Police Department, Montgomery County Public Schools, and the Maryland Department of Juvenile Services.

The MC CJJ strongly supports Maryland Senate Bill 165. This legislation will end automatic charging of young people as adults in Maryland by repealing provisions that send individuals as young as 14 years of age directly into adult court if they are accused of committing any one of 33 specified offenses.

Automatic charging is an unacceptable departure from the philosophy on which the separate system for juvenile justice was established in the first place--namely, that children are different from adults and should be served by a system that is focused on rehabilitation, not punishment. SB 165 does not foreclose the possibility of a particular child being charged as an adult in those instances where a case can be made that the child is “unfit” for rehabilitation. However, we strongly believe that the burden of proof should be on the prosecutor to convince the juvenile court judge that the child should be transferred. We cannot support putting the burden on a young person and their defense counsel to make the case that a child should be afforded the benefits of a system that was established for the very purpose of serving all children. We see the “reverse waiver” process that is now in place as costly, inefficient, and most importantly, harmful to young people who are detained pending a decision.

Automatic charging children as adults also conflicts with what we now know about adolescent development from brain science. In fact, such science has informed several Supreme Court decisions around harsh sentencing of youth, noting that children are less blameworthy and have

substantial capacity to change.¹ Automatic charging inappropriately defines a child by the nature of the offense without attention to individual factors relating to the offense, and the child's background and needs, which should be part of any decision to transfer a child to adult court.

When young people are incarcerated in adult prisons they are at substantial risk of being victimized and dying from suicide and are deprived of services and treatment available in the juvenile justice system that are critical to addressing their behavioral, mental health, developmental, and education needs. Providing young people access to developmentally appropriate rehabilitative services is not only necessary for their health and well-being, but also critical to public safety, as research tells us that incarceration in an adult prison puts a young person at increased risk of recidivism.²

Finally, we are concerned about the racial disparities that automatic charging appears to reinforce. Over 80 percent of the young people who are automatically charged in Maryland are Black—in a State in which Black children represent about 31 percent of the population of children between 5 and 17.³

Passing SB 165 will bring Maryland a step closer to protecting the human rights of some of its most vulnerable young people.

For these reasons, we strongly urge you to support this bill and strongly urge a favorable Committee report.

Sincerely,



Chris Jennison, Chair
Montgomery County Commission on Juvenile Justice

Tracey Friedlander

Tracey Friedlander, Vice-Chair
Montgomery County Commission on Juvenile Justice

¹Josh Rovner, "Juvenile Life Without Parole: An Overview," The Sentencing Project (May 24, 2021), <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>

²Jerree Thomas, "Youth Transfer: The Importance of Individualized Factor Review," Campaign for Youth Justice (March, 2018), http://www.campaignforyouthjustice.org/images/20180314_CFYJ_Youth_Transfer_Brief.pdf; Human Impact Partners, Juvenile InJustice: Charging Youth as Adults is Ineffective, Biased, and Harmful (February 2017), p. 21-22, <https://humanimpact.org/hipprojects/juvenile-injustice-charging-youth-as-adults-is-ineffective-biased-and-harmful/>; Report of the Attorney General's Task Force on Children Exposed to Violence (2012), p. 190, <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

³See reports submitted by the Maryland Governor's Office of Crime Prevention, Youth, and Victim Services on Juveniles Charged as Adults in Maryland for 7/1/19-12/31/19 and 1/1/19-6/30/2019. <http://goccp.maryland.gov/reports-publications/juveniles-reports/juveniles-charged-adults-hb-943/>



SB0165 Juvenile Court - Jurisdiction.pdf

Uploaded by: derrell frazier

Position: FAV

Senate Bill 165- Juvenile Court – Jurisdiction
Senate Judicial Proceedings
January 27, 2022
Position: Favorable

The Mental Health Association of Maryland is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates, and concerned citizens for unified action in all aspects of mental health, mental illness, and substance use. We appreciate this opportunity to present testimony in support of Senate Bill 165.

SB 165 provides due process protection to Maryland children by requiring that all criminal cases involving a minor begin in juvenile court, not adult court. This bill would not prevent children from being tried in adult court, it just means a judge will get to decide which kids get tried in adult court after a full hearing, rather than law enforcement. We thank the sponsor for introducing this bill and would like to provide a few points on why this legislation should be passed.

According to [The Sentencing Project](#), there is an overuse of automatic transfer. States have shrunk their use of automatic transfer; down from 15,000 to under 10,000 per year over the past decade. The youth justice system has the skills, staff, and knowledge to assist young people. The charges placed on a young person do not drive dangerousness or risk to public safety. Starting kids in the adult system and then returning them to juvenile exacerbates trauma and recidivism. Only nine states send more than 200 kids to the adult court every year.

When we lock up young people, they are more likely to be exposed to extreme violence, fall prey to abuse, and suffer from illnesses. Even if young people manage to escape direct physical abuse in juvenile or adult facilities, exposure and proximity to violence in and of itself causes trauma. The data shows that [80% of those kids are black](#) and [87% of those cases do not result in an adult criminal conviction](#).

Racial and ethnic minorities have less access to behavioral health services than white people. They are less likely to receive needed care and they are more likely to receive poor-quality care when they are treated. Troublingly, although this results in disparate minority criminalization, incarcerated people of color are less likely to be identified as having a behavioral health disorder and are less likely to receive treatment.

For these reasons, MHAMD supports Senate Bill 165 and urges a favorable report.

For more information, please contact Derrell Frazier at (443) 854-1413

SB 165_MDJJC_fav.pdf

Uploaded by: Fatima Razi

Position: FAV



MD JUVENILE JUSTICE COALITION
PO BOX 1282
BOWIE, MD 20718

Senate Bill 165
Juvenile Court – Jurisdiction
Ending Automatic Charging of Youth as Adults
January 27, 2022
Favorable

Dear Chairman Smith and Honorable Members of the Committee:

The Maryland Juvenile Justice Coalition (MDJJC) is a grassroots organization that unites and mobilizes constituents for juvenile justice reform in Maryland. MDJJC supported the Juvenile Restoration Act (JRA) last session because we believe in meaningful reform to protect the vulnerable children of this state. Our organization believes in second chances. We will advocate for any opportunity to create a criminal justice system more aligned with developmental science and research. This committee is prioritizing legislation to combat racial inequities, and this bill, if passed, will do just that.

MDJJC supports Senate Bill 165. Maryland sends more young people per capita to adult court based on offense type than any other state except for Alabama.¹ That is why Maryland ranks worst in the country for protecting the rights of young people in the legal system.² A major reason is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses – putting us out of step with other states and international human rights law. Last year, Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined. A staggering 93% of those were youth of color.

In Maryland, youth as young as 14 can be tried in adult court depending on what charge a police officer decides to levy against them. When young people are automatically charged in adult court, they are more likely to re-offend, sooner, with more violent crime than children who are charged in juvenile court. This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried in adult court reflect and reinforce the racial inequities that characterize the justice system in the United States.

¹ <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

² <https://humanrightsforkids.org/national-state-ratings-report/>

The Justice System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the Maryland court system.³ Rampant racial inequities are evident in the way youth of color are disciplined in school, policed and arrested⁴, detained, sentenced, and incarcerated.⁵ These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than white youth charged with similar offenses.⁶ Youth of color are more likely to be tried as adults than white youth, even when being charged with similar crimes. In Maryland between 2017-2019, 93% of juveniles tried as adults were youth of color; 80% were Black.⁷

“Tough on Crime” Laws Criminalize Youth and Make Us Less Safe

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

We can and must treat our children better. Maryland should join the 26 other states who have passed laws to **treat kids like kids and end automatic charging**. The Maryland Juvenile Justice Coalition urges this committee to issue a favorable report on SB 165.

Respectfully,

Jayna Peterson and Fatima Razi
Co-founders of the Maryland Juvenile Justice Coalition

³ Hagan J, Shedd C, Payne MR. Race, ethnicity, and youth perceptions of criminal injustice. *American Sociological Review*. 2005;70(3):381-407. See also, *DJS Data Resource Guide FY2021*, 241.

https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

⁴ Monroe CR. Why Are “Bad Boys” always Black?: Causes of Disproportionality in School Discipline and Recommendations for Change. *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*. 2005;79(1):45-50. doi:10.3200/TCHS.79.1.45-50

⁵ <https://goccp.maryland.gov/wp-content/uploads/juvenile-dmc-201101.pdf>

⁶ Soler M. Health issues for adolescents in the justice system. *Journal of Adolescent Health*. 2002;31(6):321–333.

⁷ Vera Institute, *Preliminary Findings: Youth Charged as Adults in Maryland*, Dec. 10, 2020.

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>.

MD Catholic Conference_FAV_SB 165.pdf

Uploaded by: Garrett O'Day

Position: FAV



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

January 27, 2022

**SB 165
Juvenile Court – Jurisdiction**

Senate Judicial Proceedings Committee

Position: Support

The Maryland Catholic Conference offers this testimony in SUPPORT of Senate Bill 165. The Catholic Conference represents the public-policy interests of the three (arch)diocese serving Maryland, including the Archdioceses of Baltimore and Washington and the Diocese of Wilmington, which together encompass over one million Marylanders.

Senate Bill 165 would end the *automatic* charging of youth between the ages of 14-17 as adults. Currently, there are thirty-three different offenses wherein youth are automatically charged as adults. This legislation would allow for all children to begin their case in the juvenile court system, rather than mandating that the adjudication of their case begin in the adult court system. In short, this bill would refocus our juvenile system from a “waiver-down” system to a “waiver-up” system, wherein juvenile court judges would retain discretion to waive cases up to the adult court system.

It is well-settled, in many secular, judicial and faith-based circles, that holding youth to the same standards of accountability as a fully formed adult is plainly unjust. In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the United States Supreme Court specifically noted that youthful offenders possessed “diminished capacity” and the inability to fully appreciate the risks and consequences of their actions, in considering whether youth should be treated the same as adults jurisprudentially. Additionally, the United States Conference of Catholic Bishops has further stated that “society must never respond to children who have committed crimes as though they are somehow equal to adults fully formed in conscience and fully aware of their actions.” (*Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, USCCB, 2000)

These inherent truths regarding youth should be carefully considered when assessing Maryland’s current automatic-charging law, which presumes that youth should be considered to have the same capacity as an adult in every one of thirty-three different charging scenarios. This presumption can often leave a lasting effect severely limiting a child’s ceiling for success for rest of their lives. Conversely, the transition to a “waiver up” system sought in Senate Bill 165 would safeguard youth from a lifetime of wasted opportunity, while still allowing judicial discretion to treat differently those rare cases wherein the People feel that the alleged offender is deserving of more serious consequences.

The Church is a strong advocate for restorative justice, particularly within the juvenile system. We therefore implore the General Assembly to make Maryland the next state to treat youthful offenders as they should be treated and issue a favorable report on Senate Bill 165.

SB 165 Bair FAV.pdf

Uploaded by: Gary Bair

Position: FAV



**RAQUIN
MERCER**
LAW OFFICES

Judge Gary E. Bair (Ret.)

Of Counsel

POSITION IN FAVOR OF SENATE BILL 165

I have been involved in juvenile justice issues over the past 46 years as a prosecutor, defense attorney, law school adjunct professor, and as a trial judge on the Circuit Court for Montgomery County. I am now Of Counsel to the Rockville law firm of RaquinMercer LLC. I have seen juvenile justice matters, including the automatic charging of children as adults, from all perspectives. For the reasons stated below, I urge the Committee to issue a favorable report on Senate Bill 165.

Only Alabama sends more of its children (per capita) into adult courts than does Maryland. California, with 39 million people, sent only 45 kids to adult court in 2019, while Maryland, with but a population of six million, sent 903 kids to adult criminal court in that same year. Indeed, in 2019 Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined. A major reason for this disturbing disparity is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses – putting us out of step with other states and international human rights law. A staggering 93% of those were youth of color.

Although it may appear counterintuitive from a public safety perspective, when young people are automatically charged in adult court, they are **more** likely, not less likely, to re-offend, sooner, with more violent crime than children who are charged in juvenile court. This is so because youths benefit from the rehabilitative opportunities offered in the juvenile justice system whereas the adult prison system merely teaches them to become hardened criminals. Studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

Current practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried in adult court reflect and reinforce the racial inequities that characterize the justice system in the United States. However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent.

There is a simple way to remedy this problem. As is already the case with less serious charges, the law should be amended so **all** cases involving juveniles are initially charged as delinquency cases in juvenile court. There already exists a mechanism to waive appropriate cases to adult criminal court. Initial charging in juvenile court with discretionary waivers to adult court (where a judge evaluates each juvenile and each charge), is a more equitable and humane mechanism than automatic adult jurisdiction. We can and must treat our children better. Maryland should join the 26 other states who have passed laws to treat kids like kids and end automatic charging. I urge this committee to issue a favorable report on SB 165.

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People's Commission Testimony in Support of Juveni

Uploaded by: Iman Freeman

Position: FAV



SB165 – Juvenile Court - Jurisdiction

Presented to the Honorable Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and
Members of the Judicial Proceedings Committee
January 27, 2022, 2pm

POSITION: SUPPORT

Testimony of Baltimore Action Legal Team Representing the People's Commission to Decriminalize Maryland

The People's Commission to Decriminalize Maryland strongly supports SB165/HB294, and we urge the House Judiciary Committee to issue a favorable report on this bill. The People's Commission was created to reduce the disparate impact of the justice system on youth and adults who have been historically targeted and marginalized by local and state criminal and juvenile laws based on their race, gender, disability, or socioeconomic status.

Maryland law currently deprives children and youth their identity as children and youth, purely by operation of law, by requiring children as young as 14 to be automatically prosecuted in adult court. Maryland is an outlier among states in its use of automatic prosecution of youth in adult court. This is not a surprise given that studies find transfer to the adult system is not an effective deterrent to crime. Indeed, those studies have generally found that youth transferred to adult court reoffend at higher rates and for more serious offenses than youth with similar charges and backgrounds whose cases are handled in juvenile court.¹

A 2010 Task Force established by the U.S. Department of Health and Human Services and conducted a systematic review of studies of the effectiveness of transfer on preventing or reducing violence and found that transfer to adult court was a **“counterproductive strategy for preventing or reducing violence,”** with young people transferred to adult court reoffending at significantly higher rates and for more serious offenses than similarly situated youth who were adjudicated in the juvenile justice system.²

¹ See, e.g., Robert Hahn et al., Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System, Task Force on Community Preventive Services (2010); Richard E. Redding, Juvenile Transfer Laws: An Effective Deterrent to Delinquency?, United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention (2010).

² See Hahn et al., supra note 1.

The U.S. Department of Justice conducted a similar review in 2010, examining many of the same studies and reaching similar conclusions.³ The Department of Justice review attributed the poorer public safety outcomes to four factors: (1) the stigmatization and other negative effects of labeling youth as convicted felons, (2) the sense of resentment and injustice youth feel about being tried and punished as adults, (3) the learning of criminal mores and behavior while incarcerated with adult offenders, and (4) the decreased focus on rehabilitation and family support in the adult system.⁴ The review ultimately concluded that **“the practice of transferring juveniles for trial and sentencing in adult criminal court has... produced the unintended effect of increasing recidivism, particularly in violent offenders... if it was indeed true that transfer laws had a deterrent effect on juvenile crime, then some of these offenders would have not offended in the first place.”**⁵

For those reasons, many states in recent years have limited or ended automatic transfer to adult court. For example, in July 2019, Oregon passed legislation to roll back its adult transfer and sentencing laws that were implemented in 1995. The legislation, known as Senate Bill 1008,⁶ returned jurisdiction for all charges to the juvenile justice system. In order to move a youth’s case to the adult court system, prosecutors must request a waiver hearing before a judge who decides whether the case should be transferred to adult court. Additionally, the legislation creates a “Second Look” process that allows judges to determine if further incarceration is appropriate for youth who are convicted in adult court and sentenced to more than 24 months incarceration, both at the halfway point of their sentence and prior to being transferred to the adult Department of Corrections at the age of 25 (if a youth’s sentence extends beyond that point). The legislation had bipartisan support and had a broad base of supporters in Oregon, including the Oregon Youth Authority, the Department of Corrections, and the Attorney General.

Many youth in Maryland who are initially automatically transferred to adult court end up having their cases sent to juvenile court, but only after the harms and trauma of incarceration and prosecution in the adult criminal legal system. Additionally, the vast majority of youth who experience those harms are Black. SB165/HB294 would take a long overdue step in ending a harmful, counterproductive, and costly practice and would promote a more equitable, evidence-based, and effective approach to justice. **For these reasons, the People’s Commission to Decriminalize Maryland strongly supports SB165/HB294 and urges the Committee to issue a favorable report.**

³ Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention (2010).

⁴ *Id.*

⁵ *Id.*

⁶ Oregon Youth Authority, *Governor Signs Senate Bill 1008 into Law* (July 22, 2019), available at <https://insideoya.com/2019/07/22/governor-signs-senate-bill-1008-into-law/>.

HRFK MD Senate Judicial Proceedings Testimony - SB

Uploaded by: James Dold

Position: FAV



**TESTIMONY IN SUPPORT OF SB 165 BEFORE
THE MARYLAND SENATE JUDICIAL PROCEEDINGS
COMMITTEE**

January 27, 2021

Dear Chairman Smith and Members of the Maryland Senate Judicial Proceedings Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for SB 165. We are grateful to Senator Carter for her leadership in introducing this bill and appreciate the Maryland Legislature’s willingness to address these important human rights issues concerning Maryland’s children.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and incarceration our treatment of children in the justice system is long overdue for re-examination and reform.

Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We work to inform the way the nation understands Adverse Childhood Experiences (ACEs) from a human rights perspective, to better educate the public and policymaker's understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States.

Human Rights for Kids supports SB 165 because it will end the process of automatically sending children to adult court in Maryland. The continuing practice of disregarding child status and automatically sending children to adult criminal court is a human rights abuse. Specifically, Article 10 and 14 of the International Covenant on Civil and Political Rights states that “juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status . . . the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.” As such, automatically treating children as adults, regardless of the crime they are accused of, is a human rights abuse.

Adverse Childhood Experiences

In the vast majority of cases, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or are suicidal, or are formerly incarcerated. Studies have shown that approximately 90% of children in the juvenile justice system have experienced at least 2 ACEs, and 27% of boys and 45% of girls have experienced at least 5 ACEs.

Childhood trauma is the primary driver and root cause for how and why so many kids end up in the criminal legal system. Policies that permit children to be automatically charged as adults ignore this truism and divest juvenile court judges – who are trained in child development – from making a decision of what is in the best interest of the child and society.

Because most of the children accused of crimes have been victims themselves, automatic adult charging policies ignore and disregard both the victim and child status of these offenders. That is not to say that in appropriate cases public safety considerations may require the court to waive juvenile court jurisdiction, but that that decision rightfully should rest with juvenile court judges. These judges are in the best position to weigh a child’s trauma history with their potential for rehabilitation if kept within the juvenile system.

Juvenile Brain & Behavioral Development Science

Studies have shown that children’s brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children’s underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities.

Dynamic mapping of human cortical development



Source: "Dynamic mapping of human cortical development during childhood through early adulthood," Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

It is for these reasons that children should also not be automatically subject to criminal court jurisdiction. In every aspect of our society we require individuals who work with or make decisions about our children to be specially trained in child development, i.e. teachers, day care workers, pediatricians, nurses, etc. However, Maryland's policy of automatically charging so many children as adults and vesting judges in criminal court with ultimate decision making authority over them is counter to how we treat children in every other aspect of our society. Like pediatricians and teachers in health care and learning settings, we should bestow decision making authority over our children in the legal system with juvenile court judges who have been trained specifically on child development.

Human Rights Violations

Because of the way children are treated in the criminal justice system, we designated Maryland one of the "Worst Human Rights Offenders" in the nation in our 2020 National State Ratings Report. Maryland was penalized in our assessment, in part, for its automatic charging policy that has resulted in the state being second in the nation, only to Alabama, in the number of youth charged in adult court every year. It should be noted that more than 80% of youth charged as adults in Maryland are Black. Such practices are contrary to human rights law and have made Maryland a national outlier.

Redemption for Maryland

Nelson Mandela once said, "*There is no keener revelation of a society's soul than the way in which it treats its children.*" What does it say about our soul then if we allow so many children, the vast majority of whom are Black, to be automatically charged as adults?

Maryland is disregarding international human rights norms, juvenile brain and behavioral development science, and the fact that so many of these children are actually victims of crime themselves.

Maryland's policies have firmly established the state as one of the worst human rights abusers in the nation when it comes to children in the legal system. But with the passage of SB 165, however, Maryland can find redemption by recognizing that kids are different and should be treated differently in the legal system. We have juvenile courts and juvenile court judges for a reason – to determine how children should be treated when they come into conflict with the law.

For these reasons, we strongly urge this committee to vote favorably upon SB 165 and end the human rights abuse of automatically charging children as adults. Thank you for your consideration.



James. L. Dold
CEO & Founder
Human Rights for Kids

National State Ratings Map.pdf

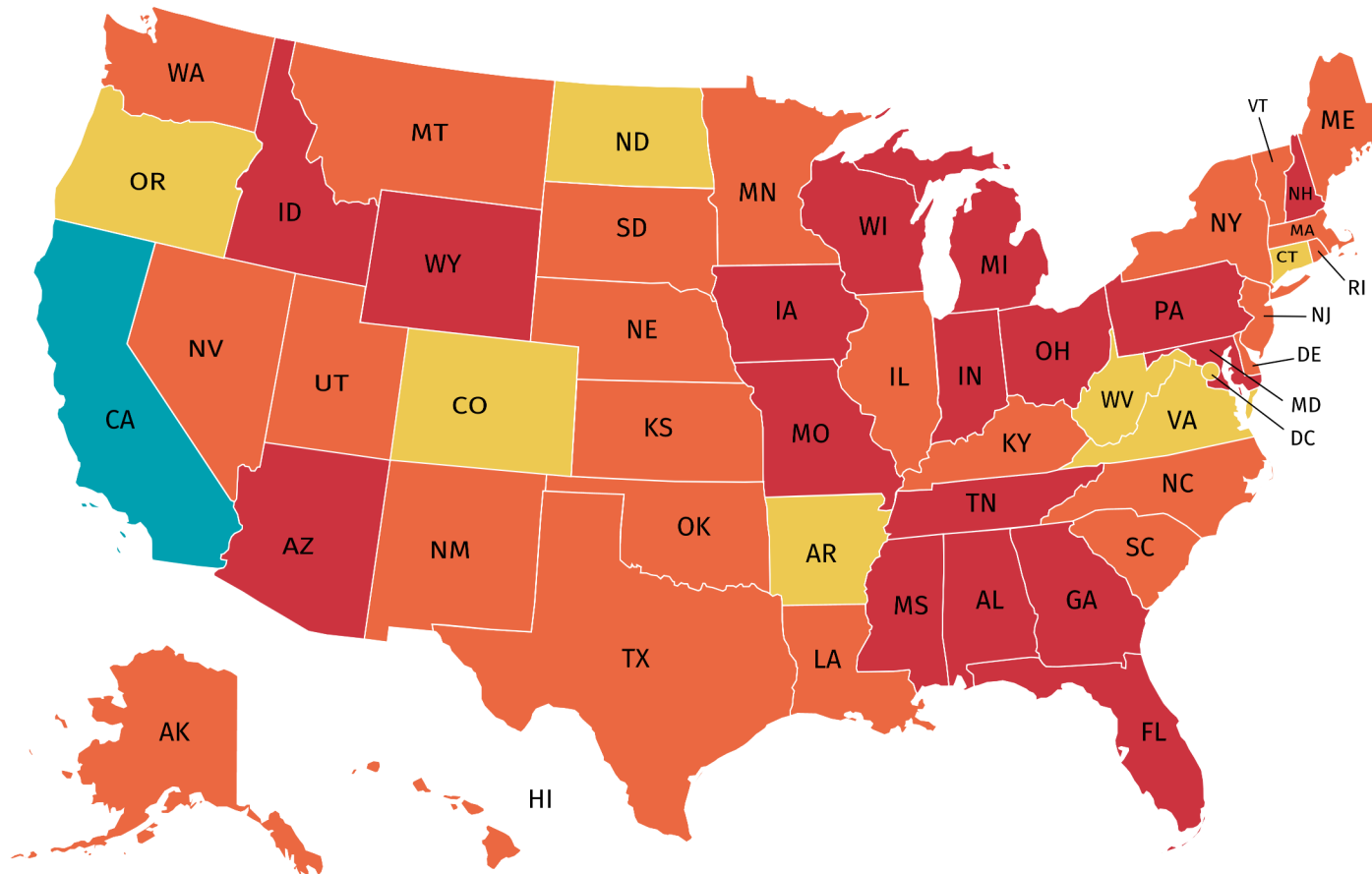
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Position: FAV

How Does Your State Treat Kids in the Justice System?

Human Rights for Kids has rated all 50 States and the District of Columbia on 12 categories of law that are vital to protecting the human rights of children in the U.S. Criminal Justice System. (See the other side for Category Descriptions)

- 1 Tier One (10+ points):** State has created an impressive legal framework to protect the human rights of children in its justice system and has taken its obligation to defend human rights seriously.
- 8 Tier Two (7 - 9 points):** State has passed several laws to protect the human rights of children in the justice system and should take additional steps to improve and implement its burgeoning legal framework.
- 27 Tier Three (4 - 6 points):** State has made minimal efforts to protect the human rights of children in the justice system and should take immediate action to improve and implement its laws.
- 15 Tier Four (1 - 3 points):** State has made little to no effort to protect the human rights of children in the justice system and is likely in violation of international human rights standards.



Best Human Rights Protectors

California (9.5)
North Dakota (8)
Arkansas (7.5)

Worst Human Rights Offenders

Alabama (2)
Georgia (2)
Maryland (2)
Mississippi (2)
Tennessee (2)
Wyoming (2)

Category Descriptions



DUE PROCESS

Require children to consult with their parents or legal counsel before waiving their Miranda Rights or being subject to a custodial interrogation.



MANDATORY MINIMUM SENTENCES

Authorize judges or juries to depart from all mandatory minimum sentences when sentencing children in adult criminal court.



SOLITARY CONFINEMENT

Prohibit the use of solitary confinement, room isolation, seclusion, or administrative segregation on incarcerated children.



MINIMUM COURT AGE

Prohibit all children less than 10 years of age from being adjudicated delinquent in the juvenile court system.



FELONY-MURDER RULE

Eliminate the felony murder rule for children who do not kill or intend to kill anyone during the commission of a felony offense.



INCARCERATION

Prohibit detaining or incarcerating children less than 18 years of age in adult correctional facilities, including local jails, lock-ups, and prisons.



MAXIMUM COURT AGE

Do not exclude children less than 18 years of age from being adjudicated in the juvenile court system.



LIFE WITHOUT PAROLE

Ban life without parole sentences from being imposed on all children less than 18 years of age.



POST-RELEASE SUPERVISION

Allow formerly incarcerated children to be discharged from lengthy parole or community supervision at a reasonable point after their release.



ADULT COURTS

Prohibit prosecuting kids under 14 as adults AND require a child status hearings for all kids 14+ before allowing transfer to adult criminal court.



RELEASE SAFETY VALVE

Allow the parole board or judge to review all sentences previously imposed on child offenders after no more than 30 calendar years (end de facto life without parole).



VOTING RIGHTS

Allow formerly incarcerated children to have their voting rights restored.

Working to End Children's Rights Abuses

We founded **Human Rights for Kids** because we believe every child deserves hope and love. What started as an idea, is now a growing movement making a difference in every U.S. state and beyond. Learn more about our mission, our vision and what our team values most.

VISIT US



WDC Testimony SB0165_FINAL.pdf

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

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**Senate Bill 165 – Juvenile Court -- Jurisdiction
Judicial Proceedings Committee – January 27, 2022
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2022 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

WDC urges the passage of SB165. This bill would repeal the provisions in the Maryland criminal code that have the effect of automatically charging as adults children as young as 14 years of age who have committed one of 33 specified offenses. WDC supports the proposal to restore the jurisdiction of the juvenile court for these children because neither science, concerns for public safety nor ideas about justice support the continuation of automatically charging children as adults in Maryland. In fact, this reform is long overdue.

Charging youth as adults is at odds with the purpose of juvenile justice system and is not supported by what science tells us today about adolescent development.

The juvenile justice system was founded with the goal of serving the best interest of the child. It was based on an understanding that children were different from adults and require a different approach for accountability and rehabilitation. Laws providing for automatic charging represent a significant departure from that philosophy.

Research on adolescent brain development has since confirmed that the philosophy behind a separate system for youth was well-founded. Children have a less developed sense of right and wrong, are susceptible to peer influence, have reduced impulse control, and are unable to foresee the consequences of their behavior. They overreact and are prone to risky experimentation. These characteristics can lead to behavior that does not necessarily reflect deficiencies in character, but instead their stage of development. Experts argue that they should be viewed as less culpable and blameworthy due to their diminished neurocognitive capacity. In addition, their behaviors are not fixed; youth are capable of learning and changing.¹ Court rulings have emerged that relied on these research findings. Since 2005, a number of Supreme Court decisions have recognized these differences between young offenders and adults in

¹Governor's Office of Crime Control & Prevention, Report of the Maryland Task Force on Juvenile Court Jurisdiction (December 1, 2013), Appendix C-Literature Review and List of Considered Research, p. 33, <https://goccp.maryland.gov/wp-content/uploads/juvenile-court-jurisdiction-20131201.pdf>; Futures Denied, Why California Should not Prosecute 14-and 15-year-olds as Adults, Human Rights Watch (2018), p. 17-18, https://www.hrw.org/sites/default/files/supporting_resources/crd0818.pdf. Estivaliz Castro, David Muhammad, and Pat Arthur, "Treat Kids as Kids, Why Youth Should be Kept in the Juvenile System", California Alliance, Youth and Community Justice (October 2014), p. 2, <https://nicjr.org/wp-content/uploads/2018/01/Treat-Kids-as-Kids-CAYCJ-Oct-2014.pdf>.



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cases involving harsh sentences for offenders under 18.² Like many of these harsh sentencing laws, automatic charging policy was rooted in racialized myths about super-predators that have long since been debunked and predictions of a surge in juvenile crime that did not happen.³ It is time for Maryland to roll back its outdated and harmful laws that put kids in adult courts and prisons.

Notably, many young people who are charged as adults in Maryland end up in juvenile court after having successfully petitioned for a reverse waiver before the criminal court. However, it is neither efficient nor consistent with the objectives of juvenile justice to automatically charge hundreds of children as adults each year, putting them in the position of having to convince a judge presiding over a criminal court they should be treated as children. Children and their counsel should not be burdened with the job of making the case for the child's amenability to rehabilitation to a judge who is not knowledgeable about child development or the rehabilitation of children.⁴ The burden should be on the prosecution to demonstrate to a judge who is trained in handling juvenile cases that an individual child belongs in adult court.

Even those young people who are lucky enough to successfully petition a return to juvenile court do not escape prolonged detention, interruption in their education, delay in the initiation of rehabilitation services, and the trauma associated with the uncertainty about their future.⁵ Research has documented a negative psychiatric impact on adolescents charged as adults. Based on what we know about the blameworthiness of adolescents and their substantial capacity to change, the most defensible approach is to allow the age of the offender to determine their placement. Starting all cases involving young people under the age of 18 in juvenile court will save scarce resources and time and increase the chances of successful rehabilitation for the young person.

Automatic charging can destroy the lives of young people the juvenile system was established to protect.

Incarcerating young people in adult prisons deprives young people of the developmentally appropriate services they need to succeed and increases the chances that they will be harmed.

Young people who have been convicted as adults have a wide range of emotional, developmental, academic, and behavioral needs that are not likely to be met in a facility that is designed to punish and incapacitate. The physical infrastructure, staffing ratios, and visitation policies in adult facilities are not designed to support the rehabilitation of young people, but to ensure security and provide for punishment.

²Roper v. Simmons 543 U.S. 51 (2005), Graham v. Florida 560 U.S. 48 (2010), Miller v. Alabama 567 U.S. 460 (2012), Montgomery v. Louisiana 577 U.S. ___ (2016), and Jones v. Mississippi 593 U.S. ___ (2021). For a description of the findings in these cases see a briefing paper by Josh Rovner, "Juvenile Life Without Parole: An Overview," The Sentencing Project (May 24, 2021), <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>

³ Castro (2014), p. 1; Michael Bochenek, No Minor Matter; Children in Maryland's Jails, Human Rights Watch (1999), p. 12-16, <https://books.google.com/books?id=uykrNtPCtTAC&q=Adult+courts#v=snippet&q=Adult%20courts&f=false>

⁴ Juvenile Justice Monitoring Unit, State of Maryland, Fourth Quarter Report and 2018 Annual Review, p. 4, https://www.marylandattorneygeneral.gov/IJM%20Documents/IJMU_2018_Annual_Report.pdf.

⁵ Juvenile Justice Monitoring Unit Report (2018), p. 4.



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Incarceration in an adult prison can cause and exacerbate mental health issues. There is substantial evidence that it increases the risk of suicide. It also negatively affects identity formation. Youth in adult prisons are also at greater risk of physical harm and sexual abuse and being put in solitary confinement.⁶

Young people charged as adults must also endure the lifelong collateral consequences of conviction and incarceration. When they are released, if they are released, they have difficulty making a fresh start because unlike children charged in juvenile court, they have a criminal record that affects their prospects for decent housing, education, and employment.⁷ They are also unlikely to have had the education and socialization opportunities needed to acquire the skills, competencies, and experiences crucial to becoming productive adults. They are more likely to have been criminalized and thus susceptible to recidivism.

This tough on crime policy has not served to achieve goals relating to community safety.

Transferring youth to adult court for trial and sentencing has been shown not to have the desired deterrent effect and to have produced the unintended effect of increasing recidivism.⁸ In 2010, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention released a monograph that concluded, after a review of the empirical evidence, that laws that facilitate trying young people in adult court have little or no general deterrent effect on youth. It also found, after a review of large-scale studies, higher recidivism for youth charged as adults than those with similar offenses adjudicated in juvenile court.⁹ A CDC report indicates that the subsequent offenses committed by those youth who are rearrested are also

⁶Human Impact Partners, *Juvenile InJustice: Charging Youth as Adults is Ineffective, Biased, and Harmful* (February 2017), p. 21-22, <https://humanimpact.org/hiprojects/juvenile-injustice-charging-youth-as-adults-is-ineffective-biased-and-harmful/>; Malcolm C. Young and Jenni Gainsborough, "Prosecuting Juvenile in Adult Court, An Assessment of Trends and Consequences", the Sentencing Project (January 2000), p. 6-7. <https://www.prisonpolicy.org/scans/sp/juvenile.pdf>; Jeree Thomas, "Youth Transfer: The Importance of Individualized Factor Review," Campaign for Youth Justice (March, 2018), http://www.campaignforyouthjustice.org/images/20180314_CFYJ_Youth_Transfer_Brief.pdf

⁷Emily Mooney, "Maryland: A Case Study Against Automatically Charging Youth as Adults," R Street Shorts, No. 76 (October 2019), p. 3, <https://www.rstreet.org/wp-content/uploads/2019/10/Final-Short-No.-76.pdf>

⁸ Nicole Scialabba, *Should Juveniles Be Charged as Adults in the Criminal Justice System*, American Bar Association Articles (October 3, 2016), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/should-juveniles-be-charged-as-adults/>; The Impact of Prosecuting Youth in the Adult Criminal Justice System, A Review of the Literature, UCLA School of Law, Juvenile Justice Project (July 2010), http://www.antonioacasella.eu/restorative/UCLA_july2010.pdf; Jason R. Tashea, & Al Passarella, "Youth Charged as Adults: The Use and Outcomes of Transfer in Baltimore City," 14 U. Md. L. J. Race, Religion, Gender & Class 273 (2015), <https://digitalcommons.law.umaryland.edu/rrgc/vol14/iss2/4>; Human Impact Partners (2017), p.7.

⁹ Richard Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, June 2010, <https://ojjdp.ojp.gov/library/publications/juvenile-transfer-laws-effective-deterrent-delinquency>.



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likely to be more violent.¹⁰ The evidence is that the focus on punishment for young people does not work. Instead, charging youth as adults arguably puts society at greater risk.¹¹

For those who believe that there are exceptional cases in which adult court and incarceration might be justified, Maryland law, like that of other States, has long allowed for transfers from juvenile court to adult court. Every year prosecutors persuade juvenile courts to transfer cases, making the argument that the young person is not fit for rehabilitation, based on what is known about the individual. This option would remain under SB165. An individualized assessment is critical to ensuring that children are not thrown into criminal court without consideration of who they are and how they ended up in the criminal justice system.¹²

Restoring the authority of juvenile court judges to make individual determinations for all young people would also save substantial time and resources. Many cases that originate in adult court due to automatic charging are ultimately transferred to juvenile court, dismissed, or result in a conviction on a lesser charge. In Baltimore City, 66.7 percent of the juveniles charged as adults in 2017 were transferred back to juvenile court.¹³ From 2017 to 2019, 87 percent of the 871 young people charged in adult court in Maryland for murder, armed robbery, assault, carjacking, and handgun offenses were not convicted in adult court.¹⁴ Automatic charging has proved to be a costly, inefficient, and inhumane process for achieving any possible social benefit derived from the incapacitation and punishment of a small number of young people.

Automatic charging affects hundreds of children each year in Maryland and disproportionately harms Black males.

At least 630 children were automatically charged in adult court in 2020 because they were alleged to have committed an exclusionary offense.¹⁵ Largely because of automatic charging, Maryland ranks only second to Alabama in youth charged as adults per 100,000 youth.¹⁶ Furthermore, this policy of exclusion by

¹⁰ Robert Hahn et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services," Department of Health and Human Services, Centers for Disease Control and Prevention (November 2007), p. 9,

<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>, see also

¹¹ Report of the Attorney General's Task Force on Children Exposed to Violence, p. 190,

<https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

¹² Thomas (2018), p. 5.

¹³ Sheryl Goldstein and Katherine McMullen, "Fact Check: A Survey of Available Data on Juvenile Crime in Baltimore City," The Abell Report, Vol. 31, Number 3 (June, 2018), p. 11,

<https://abell.org/sites/default/files/files/Juvenile%20Justice%20Report%20-%20Sept%202013%20edits.pdf>

¹⁴ <https://threadreaderapp.com/thread/1473683273503186944.htm>.

¹⁵ The data for 2020 are drawn from reports submitted by the Governor's Office of Crime Prevention, Youth, and Victim Services, Juveniles Charged as Adults in Maryland for 1/1/2020-6/30/2020 and 7/1/2020-12/31/2020.

¹⁶ "National Trends in Charging Children as Adults," Power point presentation by Marcy Mistrett, Senior Fellow at the Sentencing Project, to the Juvenile Justice Reform Council (July 20, 2021),

<https://www.sentencingproject.org/publications/testimony-to-the-maryland-juvenile-justice-reform-council-on-juvenile-justice/>



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statute disproportionately harms Black youth in Maryland. Over 80 percent of the youth charged as adults due to automatic charging in 2020 were Black. Using data for 2019, the Office of Legislative Services calculated that Black youth (10-17) in Maryland were more than 7 times more likely to be criminally charged as adults than their white peers.¹⁷ There is also evidence that those young Black people tried in adult court are more likely to receive harsher dispositions and be incarcerated.¹⁸ Automatic charging in Maryland has reinforced the stark racial inequities in our criminal justice system.

The automatic charging of youth as adults in Maryland is a policy without a defensible rationale that has adversely affected more than 7800 young people under the age of 18 since 2013, 80 percent of whom were Black.¹⁹ It is time for Maryland lawmakers to acknowledge that the policies of the 1990s do not serve a valid public interest in safety or in helping some of our most vulnerable youth account for their crimes in a manner that allows them to become productive citizens. Judicial precedent tells us, the science tells us, social research tells us, common sense tells us that we have a far better chance of effectively addressing crime committed by children if we treat them as children.

We ask for your support for SB165 and strongly urge a favorable Committee report.

Respectfully,

Leslie Milano
President

¹⁷"Racial and Equity Impact Note for Senate Bill 395," Department of Legislative Services, Maryland General Assembly, 2021 Session, p.6. This calculation was done using data for 2019 from the reports submitted by the Governor's Office of Crime Prevention, Youth, and Victim Services. <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-SB395-REIN.pdf>

¹⁸Report of the Maryland Task Force (2013), p. 34.

¹⁹Issue Papers, 2022 Legislative Session, Department of Legislative Services (2021), p. 190, <http://dls.maryland.gov/pubs/prod/RecurRpt/Issue-Papers-2022-Legislative-Session.pdf>

SB165 Juvenile Court Jurisdiction - Support .pdf

Uploaded by: John Giannetti

Position: FAV

Maryland Criminal Defense Attorney's Association



MD Senate -Judicial Proceedings Committee

January 27, 2022 1:00pm

Hearing on SB 165

Juvenile Court - Jurisdiction

MCDAA POSITION: SUPPORT

Brief bill explanation: The bill makes changes to the system by which individuals are placed in either adult court or juvenile court. This bill moves us to a system which allows prosecutors and judges to decide who belongs in adult court - after a full and fair hearing, but prior to a hearing on the charges.

Simply put, Maryland's system of charging youth directly as adults in criminal court does not work for youth, for families, or other stakeholders.

This bill gets young people into treatment faster, and limits unnecessary detention and delays for witnesses, crime victims, and other stakeholders. This bill also reflects the reality in Maryland courts: when judges finally make decisions about who belongs in adult court, they overwhelmingly decide juvenile court is the right place for juveniles - - even under the current system by which the juvenile has the burden of showing they belong in juvenile court.

Maryland did good work ten years ago in reforming the harmful practice of holding juveniles in adult facilities pending transfer hearings. Since that time, while other states have taken leadership roles, Maryland has not changed their outdated system. This bill brings Maryland back to the forefront of juvenile justice reform.

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com

MYJC_Public Comments_FAV.pdf

Uploaded by: John King

Position: FAV



**Public Testimony in Support of SB 165
Juvenile Court – Jurisdiction
End Automatic Charging of Youth as Adults
January 25, 2022
Favorable**

Dear Chairman Smith and Honorable Members of the Judicial Proceedings Committee:

In addition to our organizational testimony in support of SB 165, the Maryland Youth Justice Coalition is proud to present the public comments of 50 Maryland residents who strongly support this legislation. The people of Maryland are horrified by our state being rated the worst in the country for protecting the human rights of children in our youth justice system. Many of them write about wanting our system to treat kids like kids and ensure that children who end up in the justice system are given the support they need to rehabilitate and live happy, productive lives. This isn't possible when they are automatically charged in adult courts, making their first interactions with the justice system in a place designed for adults. The message is clear: Marylanders support SB 165 and are calling on the General Assembly to take action and reform our youth justice system this session.

Public Comment:

I've worked on this issue for over a decade. Automatic charging subverts the valid reasoning behind setting up the juvenile court. The get-tough idea behind automatic charging has never proven to be effective in making us safer.

Charles Cooper, Baltimore City

Children are children, period. Our current laws are anti-science, anti-family, and a tool that allows systemic, institutional racism to flourish in our state. Juveniles belong in juvenile courts.

Angela Gale, Baltimore City

Children in Maryland deserve to be protected and supported. But as the laws stand now their human rights are being violated. Treat kids like kids and end automatic charging!

Cecile Adrian, Baltimore City

It is widely proven that children's, and even young adults, executive functioning is not fully developed until the age of 25- specifically affecting the ability to control impulsive behavior. Charging youth as adults prevents them from having the opportunity to actually rehabilitate and

safely and functionally return to the community. Instead of focusing on punishment (which we know does not prevent crime), why not focus on prevention?

Jessica Xander, Baltimore City

Automatic charging for youth is absolutely heinous. It is counterproductive to the stated goal of addressing crime because it only serves to criminalize (predominantly Black) children. This is a bare minimum step in the right direction.

Mariarosa Marinelli, Baltimore City

Maryland needs to learn lessons from other jurisdictions that have successfully reformed their juvenile justice systems. Programming should be age/developmentally appropriate with an emphasis on counseling, education, and vocational training. Successful alternatives to confinement have focused on connecting them with employment and education to advance their development away from high-risk behavior and support transition into adulthood. Automatically charging a kid as an adult stifles their propensity to change, reform, and grow.

T Wallace-Bey, Baltimore City

Youth deserve to be treated fairly, and one element of that is understanding fundamental differences between youth and adults. Youth deserve to be brought through the juvenile system to give them access to professionals who best understand child/adolescent developmental processes and to evaluate where the youth should be served in the justice system. This bill gives youth access to a process that can best support them, rather than moving them immediately into an adult system that is not equipped to address their unique needs.

Christine Rovner, Montgomery County

Charging kids as adults isn't an effective mechanism to enhance public safety. Rather than increasing accountability or deterring crime, it can harm youths and hinder rehabilitation. Youths in the adult system are at risk of victimization and solitary confinement, and are less able to access needed age-appropriate services. Furthermore, an adult criminal record can permanently hurt a youth's odds of accessing education, housing and employment.

Carmen Daugherty, Prince George's County

We need to protect and teach our youth not isolate them.

Hope Clark, Kent County

They are not adults in any sense. [They] should be treated totally differently from adults!

Richard Leslie, Frederick County

It's only fair.

Sharon Ellison, Montgomery County

Youth need consideration for decisions that were made in their youth.

Tony Cho, Baltimore County

It doesn't make sense to me to charge a child as an adult. They are not legally an adult until the age of 18. Their brains aren't fully developed and shouldn't be treated like they are.

Tracey Katsouros, Charles County

It will keep our communities safer. Prosecutors and judges will have the discretion needed to help stop youth from becoming hardened criminals.

Barbara Jo Wuest, Baltimore City

It lacks deliberation and commitment to a child's welfare.

Amanda M. Wren, Baltimore County

We know that people's brains are not fully formed until they are at least 26 and charging a young person as an adult disregards that science. While they may know right from wrong, they are still not reasoning as adults. Also, this does not allow for rehabilitation when their education and their maturation is inhibited by incarceration. We lose the opportunity to have productive citizens in our community.

JoEllyn Fountain, Anne Arundel County

MD must do better to treat our kids and create a better future for everyone.

Frank Lostumbo, Montgomery County

No child should be automatically charged...due to their age and growth. Science has proven over and over that their brains are still growing and don't fully understand consequences long term. Kids also have the most likelihood, if given the chance, to not re-commit crimes if led in the right direction with the right support system. Kids are the future.

Rebecca Kelly, Montgomery County

We need to stop treating children like this - this will shape the lives of these people and our society in general.

Sabina Taj, Howard County

They deserve chances to redeem themselves.

Jean-Pierra Moundou, Montgomery County

Children do not belong in cages.

Amelia McDonell-Parry, Baltimore City

As a pediatrician I know that children struggle to fully understand the consequences of their actions, regardless of how much they may appear to be fully grown. Holding a child to the same level of culpability as an adult ignores decades of neuroscience research. Children require the presence of loving families and stable homes in order to mature into well adjusted adults. By depriving children of these basic human rights we are compounding their trauma and increasing the likelihood of recidivism. No child belongs in a cage!

Kate Eaton, Baltimore City

As a pre-K teacher I know that charging children as adults takes away the requirement to consider their developmental needs and to support them in returning to family and school where they can learn alternatives to criminal behavior. It's a disgrace that Maryland is the worst in the country for this.

Heidi Mordhorst, Montgomery County

Children are not adults, and shouldn't be charged as such - especially not automatically.

Tori Latham, Baltimore City

We must protect Black children.

Tamara Korolnek, Montgomery County

Children are not adults, and it's cruel to automatically charge them as if they were. The data of how we in Maryland treat children accused of unlawful acts compared to other states shows that we are failing the next generation. Children who are accused deserve to start the process in juvenile court to effectuate better outcomes for them and our communities at large.

Elise Desiderio, Baltimore City

Youth should be tried in juvenile court, and only prosecuted in adult court after the specifics of the charge against the person warrants a move to adult court. Automatic charging is arbitrary, and unjust. It is also costly and inefficient per current findings. In addition, it leads the youth who are charged as adults to commit more serious offenses, per studies of the issue.

Linda Murphy, Prince George's County

Kids should be treated like kids.

Nora Fakhri, Baltimore City

It is simple logic- if the law states that adulthood begins at 18 years old, prosecutors and courts should follow that very law. These policies effectively end children's lives.

Samantha Horn, Baltimore City

Stop the school to prison pipeline.

Edward Larkey, Baltimore City

Children should not automatically be treated as adults by the Justice system; their cases should start in the juvenile system, which has smaller caseloads, greater access to rehabilitation, and closer collaboration with families and schools.

Erin Nortrup, Prince George's County

Youth are youth and the State of Maryland has no legal power to magically make them adults, any more than it has the power to make a toddler a teenager. Stop this pointless punitive punishment and fully fund restorative justice for youth and those they have wronged.

Mary Hershberger, Prince George's County

I support ending automatic charging for youth because it is racist, counterproductive and unnecessary.

Maurice Levy, Baltimore County

The prison industrial complex is vicious and dehumanizes people, especially children. Children should be helped rather than punished.

Jo Jovel, Baltimore City

Kids should be treated like kids - it's the right thing to do and it will result in better outcomes for them and for us.

Melissa Goemann, Montgomery County

This sounds inefficient and harmful to youth. Young people need lots of opportunities for change, not automatic judgment.

Margaret Epps, Baltimore City

Charging children is both inappropriate and inhuman. It also brings endless traumas and social issues for them and for our society.

Marie-Jo Binet

I support ending automatic charging because we need an equitable system in Maryland that is fair for all persons, kids included.

Donna Martin, Baltimore County

Our children and youth need #CareNotCages. The trauma causes even the accusation to be debilitating for life. Give our children #EmpathyNotImprisonment!

Marlon Tighman, Baltimore County

It is outrageous to me that Maryland ranks worst in the country for protecting the rights of young people in the legal system. A major reason is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses – putting us out of step with other states and international human rights law. Last year, Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined. A staggering 81% of those children were Black. Maryland should join the 26 other states who have passed laws to treat kids like kids. Please pass SB 165/HB 294. It's past time to act.

Peta Richkus, Baltimore County

I support SB165/HB294, sponsored by Senator Carter and Delegate Crutchfield, to bring Maryland in line with 26 other states and so end the practice of automatically charging kids in adult court.

Sheldon Pitterman, Anne Arundel County

Too many children are in prison for far too long and the racial impact of these policies is horrific.
Holly Syrrakos, Montgomery County

Charging kids as adults is ineffective, biased, and harmful. It runs contrary to science and reason. The juvenile system, designed to emphasize rehabilitation over punishment, is better suited to meet youth's needs.

Alayna Trilling, Montgomery County

I think the phrase 'Maryland ranks worst in the country for protecting the rights of young people in the legal system' says it all. How did we get here, and why are we still in that place? To hold this much contempt for children is heartbreaking, and it has to stop. That we keep detaining kids in this manner is unforgivable, and it can be changed, if you want it to change. The question to our legislators is this: Do you want this to change, and if not, why not?

Nicole Dvorak, Howard County

As a former teacher, I know that children do not mature until their early 20s. It's unconscionable to charge them as adults.

Megan M. Berkobien, Baltimore City

With all we now know about brain development. Kids need to be first treated as kids, no adults. How can Maryland be so behind!

Shelley Balis, Montgomery County

I believe children should be treated like children. That's why we have a juvenile justice system. If a prosecutor believes a child should be treated like an adult, they should have to make the case. It should never happen automatically.

Nancy Haines, Baltimore County

Children should have their cases heard in juvenile court that is specifically designed to deal with adolescents and their still developing brains unless the prosecutor can prove special circumstances in a particular case require that a youth be tried as an adult. We don't want kids exposed to adult criminal court or incarceration unless absolutely necessary as this is totally counterproductive.

Stanley Balis, Montgomery County

Children are not treated as adults in any other capacity and that is because they lack the developmental awareness required to be held responsible as adults. Charging children as adults is simply one more tool in the mass incarceration toolbox, particularly for Black and brown children, and it needs to stop.

Joanna Silver, Montgomery County

Children should not be automatically charged. There are always extenuating circumstances. Research shows children's brains are still developing into their 20s. It is inhumane and wrong to automatically charge children when discretion is warranted.

Vita Larkin, Montgomery County

SB 165 . The Sentencing Project. Josh Rovner. FAV.

Uploaded by: Josh Rovner

Position: FAV



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

Testimony of Josh Rovner

Senior Advocacy Associate

The Sentencing Project

In support of SB165

Before the Maryland Senate

Committee on Judicial Proceedings

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy and addressing unjust racial disparities and practices. We are grateful for this opportunity to submit testimony endorsing SB165, 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 harms public safety.
2. Starting all cases in juvenile court is more sensible and efficient than current practice.
3. Maryland's automatic transfer law is unusually harsh and unjust.

Charging Youth as If They Were Adults Harms Public Safety

Sending youth to the adult criminal justice system, for any offense, harms public safety. 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. Howell, et al., note that "research consistently shows lower recidivism rates in the juvenile justice system than in the criminal justice system."¹

The CDC's Task Force on Community Preventive Services reviewed decades of literature and concluded that sending a youth to the adult system generally increases rates of violence among youth.² 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.³

Opponents of reform bills such as these often suggest that charging youth as if they were adults means that the state is taking crime seriously. The truth is, charging teenagers in adult courts creates more crime.

Despite its flaws, the juvenile justice system is designed to be youth-serving. Adult courts are generally tasked with determining guilt or innocence and then assigning a punishment to fit the crime. Juvenile courts have the added responsibility of understanding the young person accused. All courts are concerned with recidivism; juvenile courts are built to prevent it. Post-conviction

¹ 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.

² The Community Preventive Services Task Force (2003, April). Violence Prevention: Policies Facilitating the Transfer of Juveniles to Adult Justice Systems.

<https://www.thecommunityguide.org/findings/violence-prevention-policies-facilitating-transfer-juveniles-adult-justice-systems>

³ National Research Council (2013). Reforming Juvenile Justice: A Developmental Approach. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14685>, p. 134.

programs and professional staff in the adult system are not designed or trained for working with young people. This is especially important because youth convicted as if they were adults are likely to receive probation, and ought to be served by juvenile probation officers.

Moreover, charging teenagers as if they were adults has collateral consequences. Youth tried in the adult criminal justice system generally leave with an adult criminal record and, possibly, news coverage that the Internet does not forget. Such a formal -- and informal -- record is a significant obstacle to a youth's successful reentry into the community, limiting access to the employment and student loans that provide the path to self-sufficiency outside of the world of crime. The Council of State Governments has found 359 collateral consequences for a felony conviction in Maryland, the vast majority of them limiting employment in some form.⁴ A 16-year old should not be saddled with such lifelong consequences based on a poor, though impulsive, decision.

Maryland's Automatic Transfer Law is Unusually Harsh

In the 1960s, Maryland was one of just three states (Mississippi and Pennsylvania were the other two) to automatically charge youth (14 and older) as if they were adults on murder charges.⁵ By 1986, Maryland was one of just 14 states that automatically charged youth as if they were adults based on the offense, typically murder. Maryland, on the other hand, added armed robbery as a so-called adult charge in 1973; as of 1986, only six other states did the same.⁶

Throughout the 1980s and 1990s, this legislature repeatedly added offenses to that list. As of today, Maryland automatically transfers youth charged with 33 separate offenses into adult criminal courts. Per capita, the available data show only Alabama automatically sends more of its young people into adult courts based on the charge, and Alabama's most recent numbers are so old that Maryland may actually rank last, not second-to-last, in this shameful statistic.

It is important for this committee to understand after decades of tough-on-crime rhetoric and policies, Maryland law remains an outlier. In Virginia, the legislature restricted direct filing to youth age 16 and older only for the most serious offenses: capital murder, first or second degree murder, murder by lynching, or aggravated malicious wounding. To take another example: Maryland is one of only nine states to make certain weapons charges adult offenses for 16-year olds.⁷

⁴ The National Inventory of Collateral Consequences of Conviction was created by the Council of State Governments and is available at <https://niccc.nationalreentryresourcecenter.org/consequences>.

⁵ 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.

⁶ Feld (1987) at 512-513.

⁷ National Center for Juvenile Justice (n.d.) *Jurisdictional Boundaries*.
<http://www.jjgps.org/jurisdictional-boundaries#transfer-provisions>

Nine states -- California, Hawaii, Kansas, Kentucky, Maine, Missouri, New Hampshire, North Dakota, Tennessee, and Texas -- require all cases involving youths to start in juvenile court.⁸ SB165 would make Maryland the tenth. As under SB165, transfers into adult court are still permitted following a hearing before a juvenile court judge.

Maryland law currently allows for discretionary waivers, under which any 15-, 16- and 17-year old can be transferred to criminal court. Juvenile courts can and do use such discretionary waivers; they would still be allowed under SB165.

Racial disparities

The available data compiled by the Vera Institute of Justice for 2017 through 2019⁹ show that youth of color are vastly more likely to be charged as if they were adults. Moreover, among those youth automatically charged as if they were adults, white youth are vastly more likely to be reversed waived into the juvenile courts. In the MDEC Counties, white youth whose cases were not dismissed were transferred to juvenile court 94 percent of the time. In those same counties, only 26 percent of non-dismissed cases involving youth of color were transferred to juvenile court.

Youth Charged as If They Were Adults Are Not Typically Sentenced as Adults

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. Criminal court judges are then tasked with determining whether their courtrooms, or those of family court judges, are the appropriate venue to proceed.

Youths transferred into adult court are often not 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. Clearly, too many young people begin their cases in adult courts under current law. A reasonable compromise, one offered under SB165, allows the state to begin serious cases in the juvenile courts without eliminating transfer.

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.

⁸ In all of these states except Texas, that means people under 18. Texas is one of three states who include all 17-year olds under the jurisdiction of the adult criminal courts, regardless of the offense. Texans under 17, however, always begin their cases in juvenile court.

⁹ Vera Institute of Justice (Dec. 10, 2020). Preliminary Findings: Youth Charged as Adults in Maryland. Presentation to the Juvenile Justice Reform Council.

Conclusion: Do Not Amend This Bill

The Sentencing Project strongly endorses SB165 as introduced. We urge the Committee to advance SB165 to a vote as soon as possible and without amendment. Specifically, we reject the possibility of carving out specific offenses from starting in juvenile court.

There is no public safety rationale for amendments that would weaken the bill. Juvenile courts and facilities are the correct venue for youth who are accused of violating the law.

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Uploaded by: Justin Nalley

Position: FAV



Testimony for the Senate Judicial Proceedings Committee

January 27, 2022

SB 165 – Juvenile Court – Jurisdiction

FAVORABLE

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The ACLU of Maryland supports SB 165, which would repeal provisions specifying that the juvenile court does not have jurisdiction over a child alleged to have committed certain acts. SB 165 is a positive step toward reducing the number of Maryland's children that will be charged as adults.

Maryland law requires children as young as 14 to be automatically prosecuted in adult court for 33 offenses. Maryland sends more young people to adult court based on offense type, per capita, than any other state except for Alabama.¹ Between 2017-19, more than 87% of Maryland cases where a child was charged in adult court did not result in an adult criminal conviction. Of 314 assault cases where a youth was charged in adult court, 95% of cases did not result in an adult criminal conviction.² SB 165 will better support Maryland's children by avoiding needless and harmful exposure to the adult system for children whose cases are eventually decided in juvenile court.

Trying children as adults creates damaging and lasting collateral consequences as a result of being adjudicated in adult court instead of the juvenile court system. Children charged and sentenced as adults are marred with the stigma of an adult criminal record, which may exclude them from educational opportunities, some forms of financial aid, as well as future job prospects. Educational and employment opportunities are crucial for young people hoping to continue their lives after entanglement with the criminal justice system.

Automatic transfer to adult court also disproportionately affects Black children. Black children make up 62% of the children prosecuted in the adult criminal system; they are also nine times more likely than White children to receive an adult prison sentence.³ In Maryland, 80% of children charged in adult court in

¹ <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

² *Id*

³ Campaign for Youth Justice, *Critical Condition: African American Youth in the Justice System*

Maryland are Black.⁴

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 165.

⁴ Vera Institute, Preliminary Findings: Youth Charged as Adults in Maryland, Dec. 10, 2020.

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>.

TPM SB165 Support.pdf

Uploaded by: Katie Stauss

Position: FAV



SB 165 – SUPPORT

JUVENILE COURT – JURISDICTION

Senate Judicial Proceedings Committee

Dear Chair Smith and Members of the Senate Judicial Proceedings Committee:

Takoma Park Mobilization is a grassroots organization with 2,300 members that advocates at every level of government, to ensure equal treatment and justice for all. We are in SUPPORT of SB 165.

The passage of SB 165 will end the practice of automatically charging youth as adults for 33 specific offenses. In our state, prosecutors not only can but are required to prosecute children over the age of 13 in adult court for those offenses. Maryland charges up to 1,000 children per year in adult court. We are one of only 9 other states that send more than 200 children to adult court each year. We are outliers in injustice.

Ending this practice is a justice issue for *all* children, *and* it is a racial justice issue. 81% of children charged in adult court in Maryland are Black, and they are more likely to be sent to adult prison and receive longer sentences than white children. Studies indicate that charging disparities are not an indication of increased offending by Black children, but rather indicative of racially disparate policing and treatment in courts.

In addition to the above, many young people are falsely convicted. Exonerated youth defendants are 3.5 times more likely to have falsely confessed than adults according to the National Exoneration Registry. This means that innocent youth are going to prison for serious crimes at alarming rates, and those rates are even higher for Black youth.

Charging youth as adults contributes significantly to the tragedy of mass incarceration of our youth. Maryland has the shameful distinction of sending more young people to adult court based on offense type, per capita, than any other state except for Alabama. Over the past few decades, this Senate committee has looked the other way on this humanitarian catastrophe, that has been in its power to stem. We urge you to use your position to end this in 2022, to align your actions with your words, and to do right by Maryland's children.

We urge a favorable report on SB 165

*Submitted for Takoma Park Mobilization by Katie Stauss
301-793-2352
January 25, 2022*

child_not_the_charge_report5.26-compressed.pdf

Uploaded by: Keith Wallington

Position: FAV

The Child Not the Charge:

Transfer Laws Are Not
Advancing Public Safety

CAMPAIGN FOR

YOUTH  **JUSTICE**

BECAUSE THE CONSEQUENCES /

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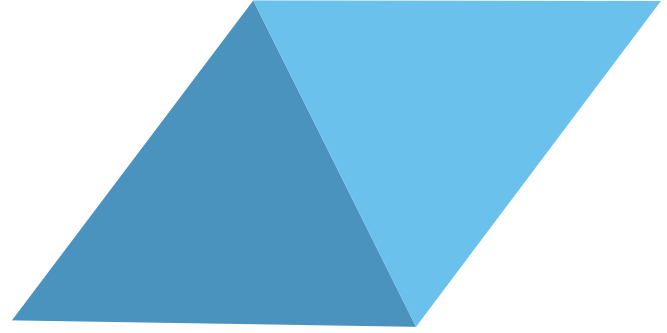
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Introduction

Over the last 20 years, elected officials and juvenile justice system stakeholders have changed policies and practices to create a more developmentally appropriate youth justice system, resulting in a reduction of the number of confined youth by 60 percent since the 1990s and reducing the number of youth automatically prosecuted as adults by 56 percent since 2007.¹ This change in course is largely the result of policies that restrict the use of secure detention facilities and limit prosecution of youth in the adult court system. These trends in declining youth incarceration rates, while positive, have primarily focused on youth involved in nonviolent offenses. Moreover, despite a significant decline in the overall use of confinement, racial disparity in the juvenile justice system has worsened in many jurisdictions. This is due, in large part, to the fact that too many jurisdictions still rely on confinement and transfer to the adult system for youth who engage in violence. The research clearly shows that youth are best served in the least restrictive setting, regardless of underlying offense type. However, state practices frequently do not follow these lessons, turning to secure settings and transfer to the adult criminal justice system when other interventions would be more effective at addressing the underlying cause of the behavior and delivering a better public safety return on investment. Instead, these punitive practices worsen racial disparities, saddle youth with the collateral consequences of a criminal record if they are prosecuted in the adult criminal justice system, and contribute to recidivism.

History

The “tough on crime” era ushers in transfer mechanisms that increasingly treat youth as adults.

The youth and adult criminal justice systems are fundamentally different. The purpose of establishing the juvenile court 120 years ago was to develop age-appropriate rehabilitative responses in recognition of the developmental differences between children and adults. Since the founding of the juvenile court system, crimes committed by children below the legal age of majority were mostly handled in those courts. The juvenile court’s role has evolved as an expanding portfolio of research reinforces the principle that children do not have fully-developed decision making skills, lack requisite impulse control, and are more amenable to rehabilitation than adults. Thus, their culpability for crimes is different than adults, and there is recognition that they should be subject to different laws, different courts, and a distinct set of correctional responses. However, during the “tough on crime” era of the 1980s and 1990s, lawmakers eroded the barrier between the adult and juvenile justice systems and pushed for more punishment at the expense of rehabilitation. This included both more punitive responses within the juvenile justice system as well as enacting laws that allowed for transfer of youth into adult criminal court and housed in adult correctional facilities for certain crimes defined as serious.² That meant that a young person would face adult punishment for their crimes, carrying the stigma of that crime for the rest of their lives, hampering their ability for future education, stable housing, and a steady career. Further, young people increasingly faced placement in adult correctional facilities exposing them to substantially higher risks of suicide and sexual assault.³

This movement to increasingly rely on adult courts for serious crimes was in reaction to public and political pressure for certainty in sentencing in the 1990s. Violent crime rates were growing through the 1980s and media coverage of isolated incidents of young people committing very serious crimes fueled an environment where some children, particularly youth of color, were characterized as “super predators”.⁴ This drove the effort to send more youth to adult court to face serious, often lifetime punishment. Survey research during that time showed that the public favored adult court for serious crimes, with 75 percent believing that violent offenses should automatically be transferred to adult criminal court.⁵

Between 1992 and 1996, 43 states and the District of Columbia changed transfer and statutory exclusion laws out of concern that the juvenile system was ill-equipped to respond appropriately to youth criminal behavior. In the same timeframe, all but 10 states adopted or modified laws making it easier to pursue adult prosecution for youth under age 18. As a result, every state now has at least two mechanisms to place youth in the adult system.⁶

Pathways to Transfer:

Lower Ages of Criminal Responsibility: Laws that establish the age of criminal responsibility below 18. Nature of the crime not considered—original jurisdiction for all crimes is in adult criminal court. Only three states still have the age of criminal responsibility set at 17. In 2015, 66,700 youth were automatically prosecuted in adult court due to these statutory requirements.

Statutory Exclusion – Laws automatically disqualifying youth from having their cases tried in juvenile court.⁷ Such practices prevent judges from considering any mitigating factors arguing for keeping the case in juvenile court. Twenty-six states have a type of statutory exclusion law applying to certain offenses.⁸ Arizona, Connecticut, and Pennsylvania automatically transfer youth starting at age 15 for some robbery and assault charges. New York does so at 14 years old and Georgia transfers at just 13 years old. In 2015, 6,000 youth were transferred into the adult system by mandatory transfer, with one-third coming from Arizona, California, Florida, Michigan, and Washington State.

Judicial Waiver – A judge may choose to transfer a youth to adult court after a court hearing. This type of transfer is quite common in state statutes, with 44 states having laws that allow the practice. However, it is not utilized frequently, with only 3,200 youth judicially-waived in 2015.⁹ Most states allow for judicial waivers after a youth reaches the age of 13. Alaska joins 15 other states in allowing waivers without specifying a minimum age requirement. In waiver decisions, judges may have full discretion on the decision whether to transfer; however the waiver may also be presumptive, or even mandatory in 12 states.

Prosecutorial Direct File – Prosecutors can file the case of a youth directly in adult court with the consent of the judge through executive authority. This is a practice in 12 states and the District of Columbia.¹⁰ Many states give the option for prosecutors to file a case directly in adult court at the same age as judicial waivers, with nine states providing this option for youth under 14 years old.

Juvenile Blended Sentencing – Originally intended to allow courts the flexibility to rehabilitate youth in the juvenile system while remaining tough on crime in the 1980s and 1990s, juvenile blended sentences have resulted in many young people receiving adult sentences in juvenile courts.¹¹ The practice has evolved into a way for adult sentences to reach youth who are too young to be transferred otherwise. Fourteen states currently use this sentencing scheme.

“Once an Adult” Provisions – If a youth is transferred, this provision requires that any subsequent offenses are tried in the adult court. Today, 31 states have adopted ‘once an adult’ language in their criminal code. While most states require that the first transfer results in a conviction to activate the provision, some only require court certification.¹²

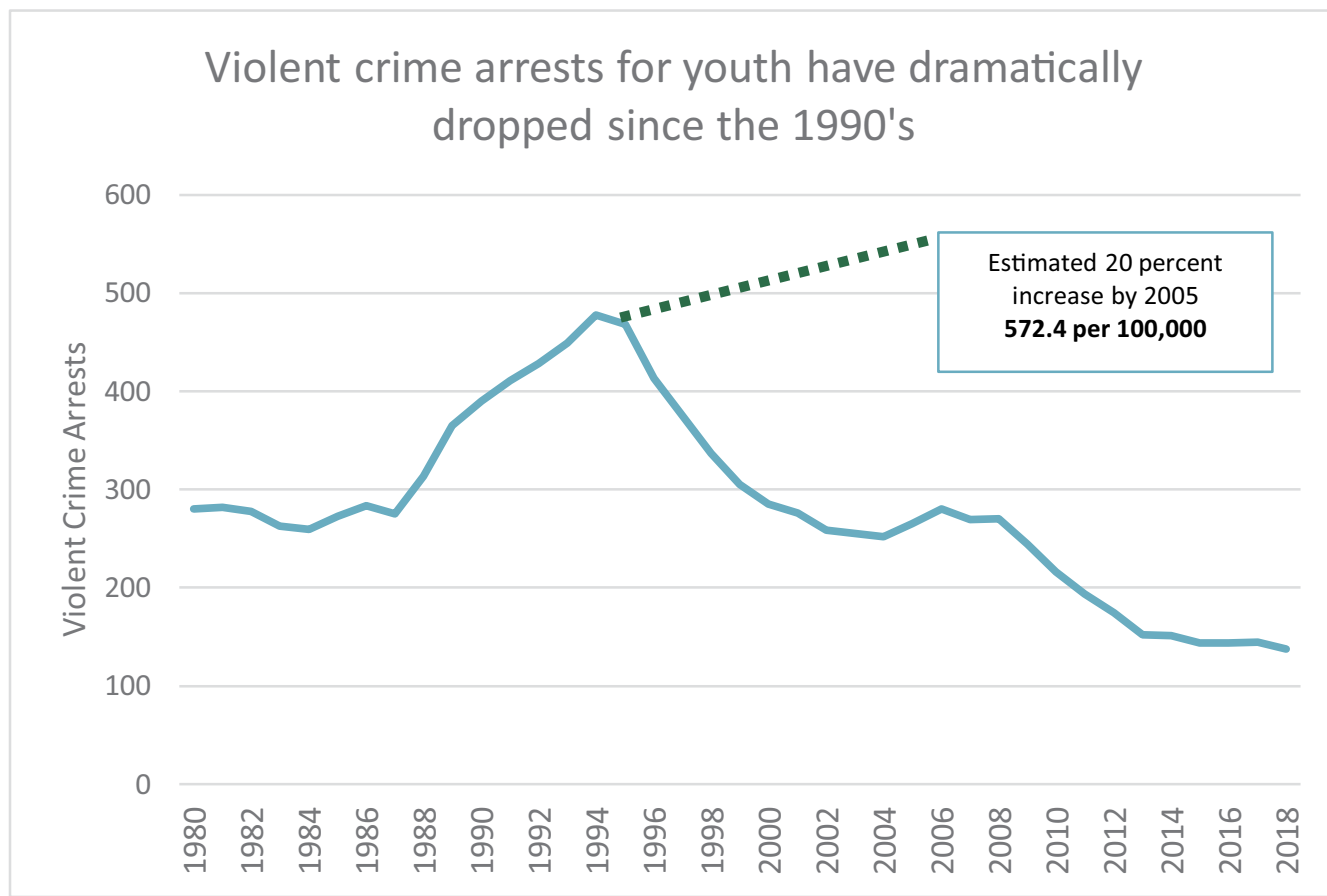
Role of Weapons – The possession or use of a firearm during the commission of a felony can impact the determination of the court system. In many cases it can lower the minimum age for transfer or activate a mandatory minimum sentence. Thirty-one states have statutory language about a firearm’s involvement in a commission of a robbery and 28 states for aggravated assault. New Mexico is the only state where a firearm does not prompt a transfer mechanism for robbery or aggravated assault. Simple possession of a firearm can result in an offense being defined as violent and lead many kids into the adult justice system.



Reforms begin

As crime drops, states gradually expand options to serve some youth in the juvenile justice system.

In the mid-1990s, during this national push to subject children who have committed serious crimes to adult punishment, it was projected that violent offenses by children would continue to rise another 20 percent by the year 2005. In fact, the opposite occurred. In 1996, violent crime was at a rate of 413 per 100,000 youth. By 2005, that rate was almost cut in half to a rate of 265 per 100,000 youth, and by 2016 was at a rate of 144 per 100,000.¹³ (Table A)



The original estimate that violence would continue to increase through the decade contradicts the robust findings emerging from the groundbreaking Pathways to Desistance research.

This work concluded that a youth's involvement in violence is not predictive of future delinquent or criminal behavior.

A seven-year long study of 1,354 youth found that participants had similar delinquency outcomes regardless of whether they committed a violent or non-violent act. Only a small percentage, fewer than 10 percent, continued to engage in criminal behavior through their adolescent and adult years.¹⁴

In 1995, over 100,000 youth were confined in the juvenile system. The latest numbers reveal a 60 percent decrease as of 2017.¹⁵ This trend was driven by a number of factors, including declining arrest rates, and changes in policy and practice spurred on by advocacy efforts to return the juvenile justice

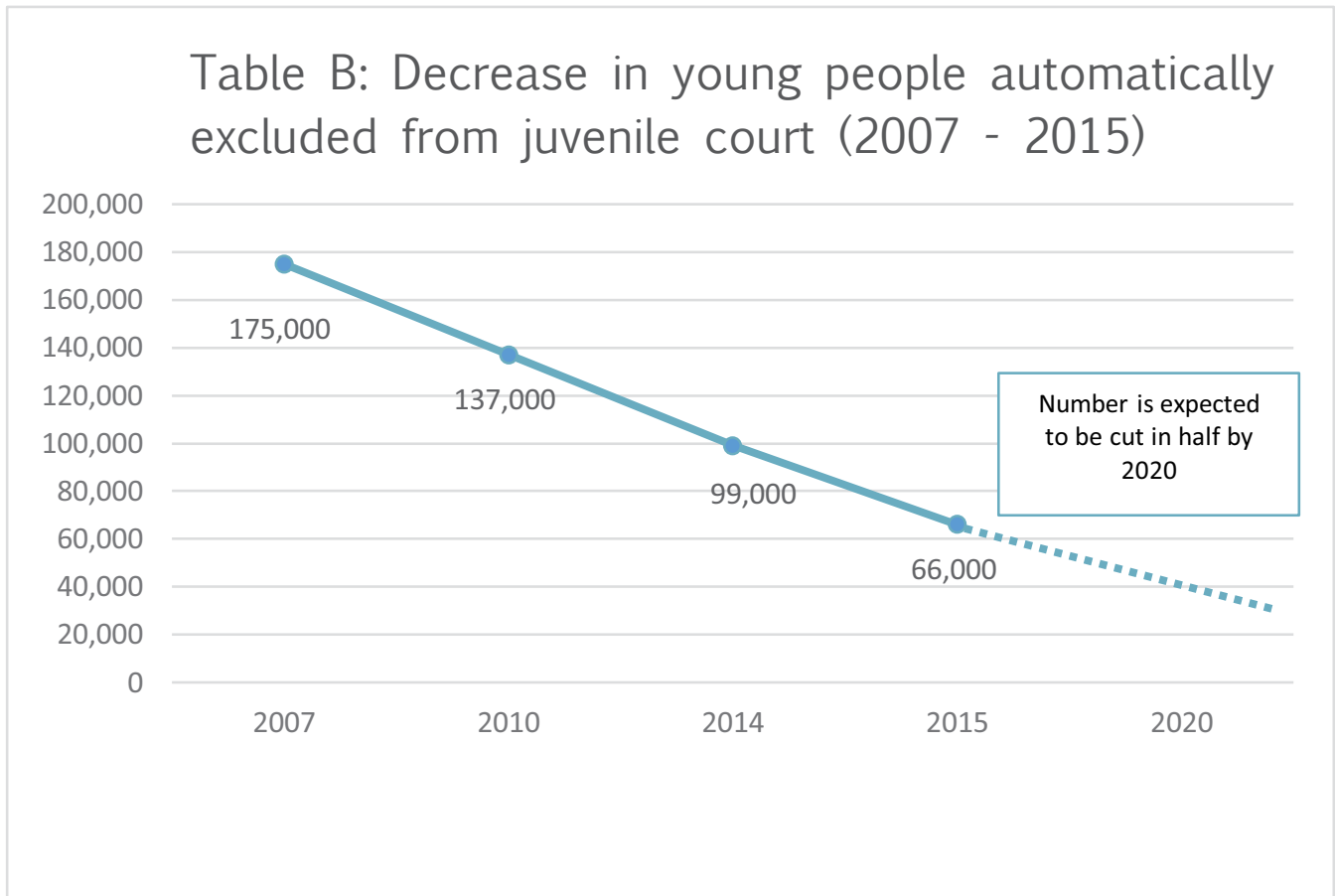
system to its founding principles focused on treatment and rehabilitation. The decline in youth incarceration was primarily focused on youth who committed status offenses or low level misdemeanors, leaving a much smaller population in both detention and commitment facilities and opening up opportunities to bring some youth back from the adult justice system.

Research has demonstrated how community-based interventions that eschew confinement for treatment were more effective at preventing future offending than simply locking up young people. Thus, more youth have remained in the juvenile justice system to receive developmentally-appropriate treatment, fewer are held in confinement, and fewer still are prosecuted in the adult system—particularly those charged with drug offenses and misdemeanors.

Raise the Age (RTA)

In 2007, there were 14 states that automatically prosecuted youth under 18 in the adult court system. At the time, Connecticut's adult jurisdiction included 16 year olds. In 2007, they raised the age to 18 and subsequently created a roadmap for other states to follow. Since that time, nine other states followed the guidance, including the two remaining states, New York and

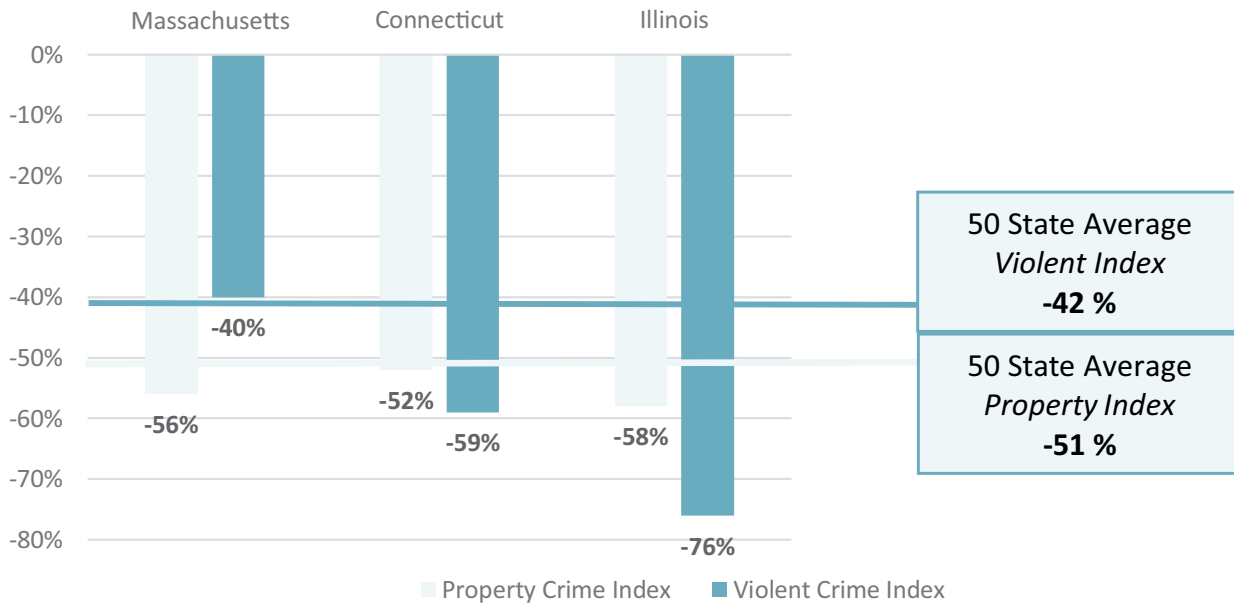
North Carolina, that had automatically prosecuted 16-year-olds as adults. Raising the age of criminal court jurisdiction has led to a decline in the number of youth in the adult system from 175,000 in 2007 to 66,000 by 2015. Projections are for that number to be halved by 2020.¹⁶ (Table B)



The *raise the age* states reformed their continuum of care to focus on community-based interventions and developed policies and practices that relied on use of the least restrictive settings. Over the years, these first-generation

Raise the Age (RTA) states, Connecticut, Illinois, and Massachusetts, reported arrest, confinement, and fiscal outcomes that either outperformed or were consistent with the rest of the country. (Table C)

Table C: The states either outperformed, or remained consistent with the rest of the country in reducing the number of arrests between 2005 and 2017



In addition to putting in place smart policies that were supported by the evidence, states saved money as a result of raising the age. Connecticut projected a \$100 million increase to the Department of Children and Families’ budget, the entity that is tasked with administering juvenile justice services, because of taking on older youth. The increased costs never materialized and instead, the child welfare and court system reinvested \$39 million in savings in community-based approaches.¹⁷

These efforts were buttressed by a growing body of empirical research highlighting that the brain continues to develop past adolescence into the mid-20s. As a result, decision making, impulse control, and culpability are limited among children and young adults (18 to 24 years of age) relative to older adults. This has led some states to consider expanding raise the age efforts beyond 18. Vermont was the first state to raise the age of criminal responsibility to age 20.

As of 2019, only three states remain that set the age of criminal responsibility at 17 years old:

- Georgia
- Texas
- Wisconsin

Raise the age reforms in every state included misdemeanor and some felony charge; however, most also “carved out” older youth who had been charged with felonies, many for crimes of violence. These decisions mirrored other states that had already established 18 as the age of criminal responsibility. In Connecticut and Illinois, after raising the age—further reforms were passed that narrowed which youth were eligible to be transferred to the adult system or excluded from juvenile court.

Raise the Age Impact: New York

As of June 2019, 73 percent of all violent felonies in New York State have been returned to family court jurisdiction to be handled as a juvenile delinquency case. While carve-outs exist, they have not greatly limited the family court’s scope. Prior to the 2017 Raise the Age legislation, those youth would have been tried and sentenced in the adult court.

Source: N.A., New York State Raise the Age Implementation Task Force: Raising the Age of Criminal Responsibility – First annual report (Albany, NY: Governor’s Office, 2019).



Transfer Reforms

Reforms have Primarily Reduced the Number of Youth Charged with Non Violent Offenses

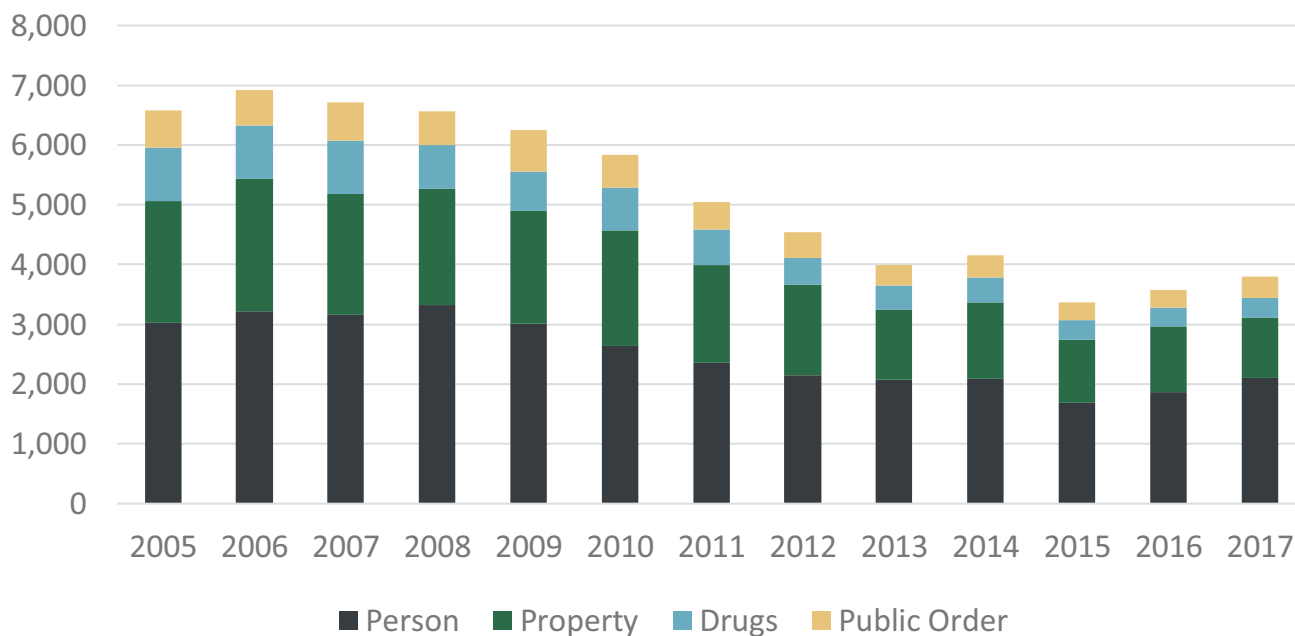
While raise the age reforms have brought the country closer to the agreement that 18 should be the minimum age that youth are considered adults, every state and Washington, D.C. still exclude some youth from juvenile jurisdiction who are younger than 18. This includes laws that statutorily exclude some youth based on age and crime, mandatory judicial waivers, prosecutorial discretion, “once an adult, always an adult” provisions, blended juvenile sentences, or role of firearms.

Since 2009, 22 states have narrowed their automatic/mandatory transfer provisions, and returned discretion to juvenile court judges. Six states have eliminated an entire transfer mechanism from their laws (California, Florida, Kansas, New Jersey, Oregon, Rhode Island); and 11 states have “raised the floor”—or removed younger youth from transfer eligibility. Others, including Delaware, Illinois, New Jersey, Nebraska, Utah have removed specific crimes from eligibility, including some crimes categorized as violent.

While these reforms impact a much smaller youth population (it is estimated that approximately 10,000 youth are statutorily excluded or waived to adult court annually, or 12 percent of all youth in adult court)—they are important in reinforcing that the juvenile court is the appropriate response to even serious youth crime.¹⁸ While research has shown that the most expedient form of transfer is when judges review on a case-by-case basis, it is important to note that judicial review is still happening in only one-third of the cases that are transferred to adult court.¹⁹

Despite these advancements, judges are still transferring nearly half of youth to adult court for charges involving property offenses, drugs, and public order violations. It was just in the past year or two, that about half of all cases waived by judges involved more serious or violent crimes. (Table D)

Table D: Youth waived to adult court by judges





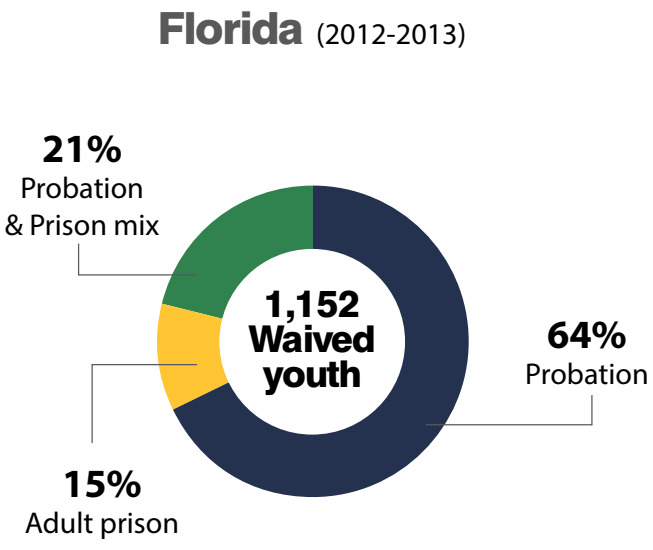
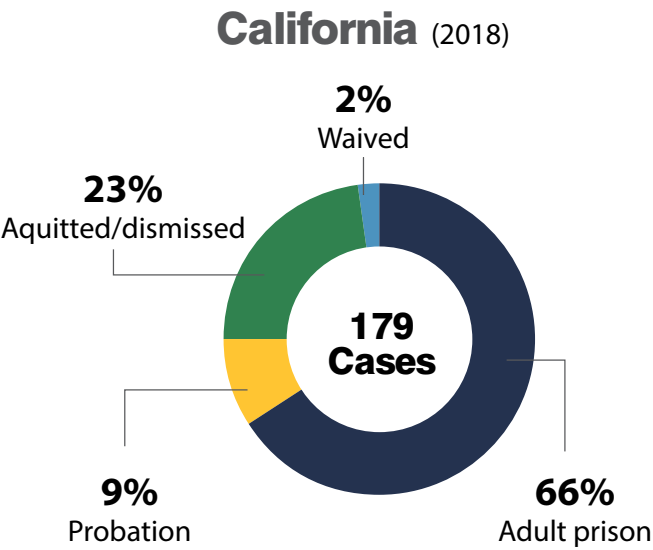
Problems persist

Despite Reforms, Serious Problems Persist with Transfer

Adult Findings Don't Indicate Youth Pose Public Safety Risks

Across states, there is an alarming lack of data about youth in the adult system. Only six states reported outcomes of those who were transferred to the adult court. While it does not paint a comprehensive picture across the country, the reporting data does reveal that most cases do not result in prison time. This poses questions around the seriousness of their offense, and whether they should have been kept under the jurisdiction of the juvenile system the entire time.

Table E: Adult sentences for transferred youth by state



California: In 2018, there were 179 cases disposed. 111 were for violent offenses.

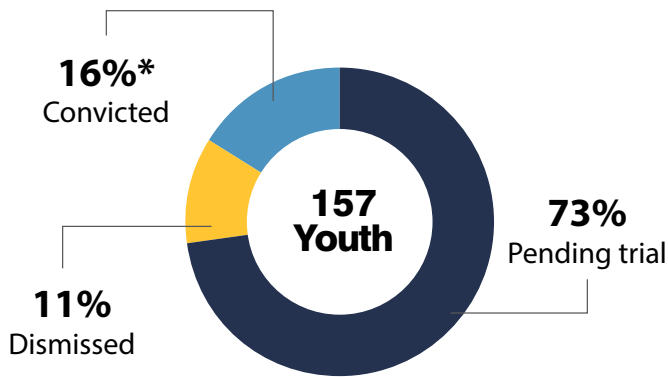
<https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Juvenile%20Justice%20In%20CA%202018%2020190701.pdf>

<https://oppaga.fl.gov/Documents/Reports/17-06.pdf>

Florida: In 2012-2013, there were 1,152 cases direct filed to adult court; only 65% led to convictions.

Table E: Adult sentences for transferred youth by state

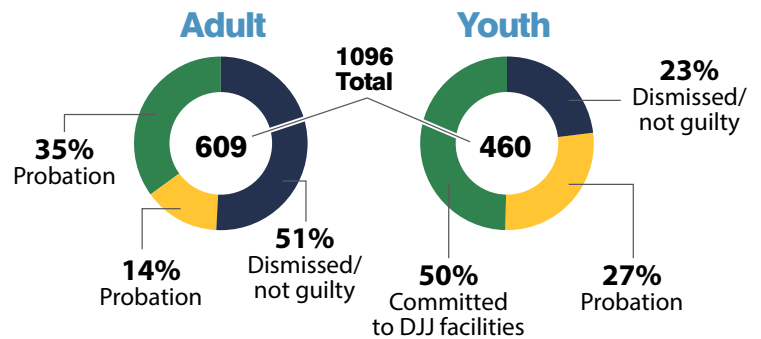
Indiana (2019)



Indiana: In 2019, of the 157 cases in adult court, 123 were a result of direct file. Top charges were armed robbery and robbery. While a small percentage of cases were disposed, most received a sentence other than prison* (35% probation; 21% supervision; 42% prison).

<https://www.in.gov/cji/2370.htm>

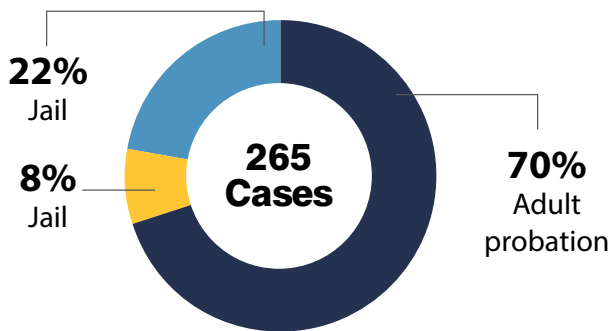
Maryland (2012-2017)
(Baltimore)



Maryland: In 2016, Maryland sent 691 youth at adult court; 216 from Baltimore. Sentencing data is only available in Baltimore over a 5 year span. Slightly more youth were kept in the adult system than returned to the juvenile system over the five years. Outcomes varied widely between to the two systems.

Cite: <https://assets.documentcloud.org/documents/4564543/Juvenile-Justice-Report-6-26.pdf>

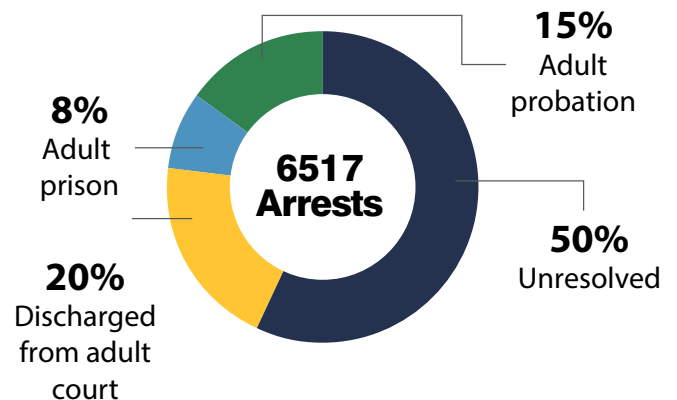
Nebraska (2017)



Nebraska: In 2017, Nebraska had 265 youth charged as adults, 29% were for traffic offenses, 43% for misdemeanors, and 27% for felonies.

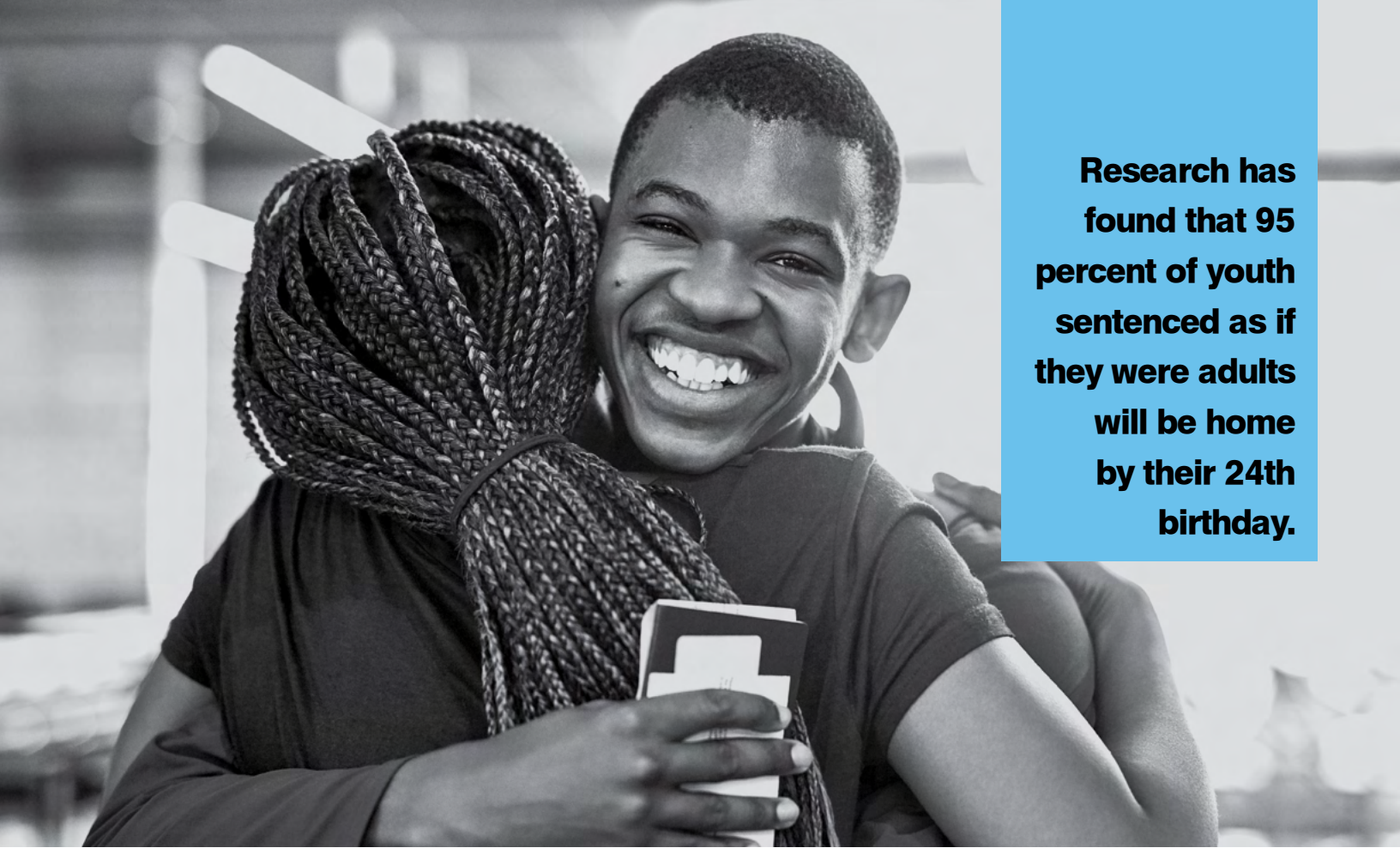
<https://supremecourt.nebraska.gov/sites/default/files/jjssar.pdf>

New York (2016)



New York: Prior to raising the age, all 16-17 year olds in NY were considered adults. Of the felony arrests, only 8% went onto prison.

https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RTA_Task_Force_First_Report.pdf



Research has found that 95 percent of youth sentenced as if they were adults will be home by their 24th birthday.

Based on a snapshot of states for the outcomes of transferred cases, it appears that some youth tried as adults end up on adult probation or receive jail time (less than one year); calling into question whether the initial charges were serious enough to warrant transfer.

Even when looking at the crimes of violence, most youth are not receiving long sentences. As JPI discussed in a 2016 report *Defining Violence*, a contributing factor to so many youth being excluded or transferred may be tied to our society's expansive definition of what is violence. In some states the burglary of an empty garage is a crime of violence, even though it doesn't involve physical harm to a person. JPI also found that the presence of a weapon, whether or not it was used in a crime, can also increase the sentence that an individual will face.²⁰ These same findings apply to young people. Research has found that 95 percent of youth sentenced as if they were adults will be home by their 24th birthday—lining up nicely with the age/crime desistance

Transfer laws worsen existing racial and ethnic disparities

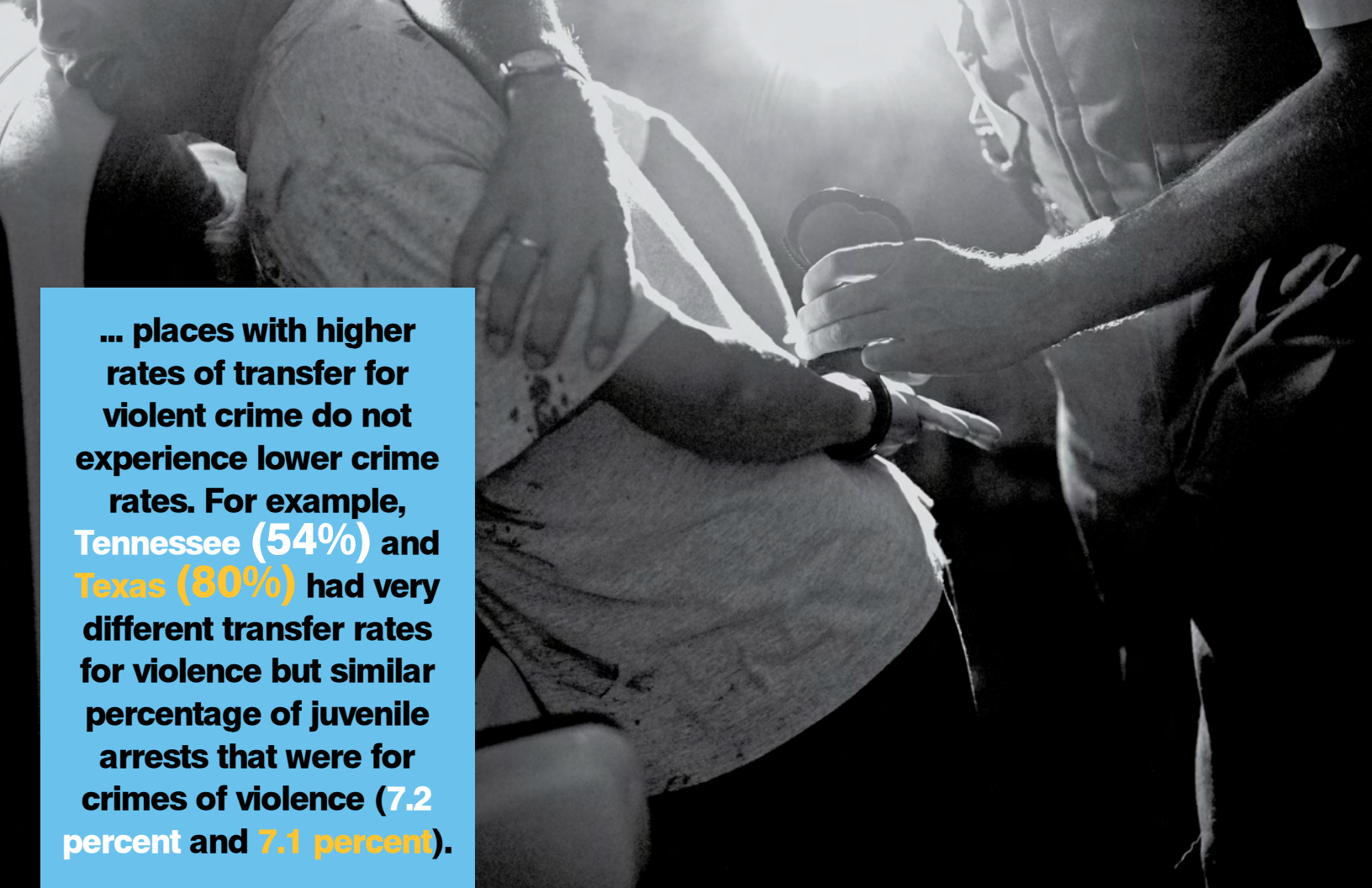
As the overall numbers of transfers decline, the proportion comprised of violent crimes has grown. While some states have partially reformed these harmful transfer policies, every state continues the practice for certain age groups and offense categories regardless of an individual's risk of reoffending or what is in an individual's best interest. These policies exacerbate longstanding racial disparities. Despite all of the recent reforms intended to improve the juvenile

curve.²¹ Moreover, 85 percent will be home by the time they are 21, which means that they could be served, with a rehabilitation frame, in the juvenile justice system in all but six states²² who end juvenile extended jurisdiction prior to age 21.

While the above reforms are moving states in the right direction, young people who commit acts of violence are still likely to be placed in secure confinement in the juvenile system or transferred into the adult system, regardless of their risk level or outcome of their case. This is problematic because research has shown that secure detention has diminishing returns for young people, and that youth transferred to adult court are more likely to recidivate with more serious crimes. California, Colorado, Indiana, and Maryland are trying to address this issue through a reverse waiver that grants judges the discretion to waive youth back to juvenile court for adjudications if they plead to something lower than what initially excluded them from family court.

justice system, judicial waivers in 2017 were the most racially disparate in 40 years.²³

State data provide a window into these worsening racial and ethnic disparities. For example, in Florida, of the 1,115 youth under 18 years of age certified to adult court, 79 percent were youth of color. Similarly, of the 677 transferred for a violent offense, 81 percent were either Black or Latinx.



... places with higher rates of transfer for violent crime do not experience lower crime rates. For example, Tennessee (54%) and Texas (80%) had very different transfer rates for violence but similar percentage of juvenile arrests that were for crimes of violence (7.2 percent and 7.1 percent).

These numbers indicate that, while youth transfers are being used less often, an increasing percentage of youth sent to the adult justice system are young people of color sentenced for a violent offense, despite findings that youth of color are engaged in acts of violence at similar rates than white youth.²⁴ This is consistent with racial disparities seen throughout the system, where youth of color are treated more harshly at each point of the system (arrest, pretrial detention, disposition, placement in confinement and transfer to adult court), resulting in increased racial disparities the deeper one goes into the system.²⁵

Outcomes remain poor

While it may appear to be a wise allocation of resources to preserve the most restrictive setting and most punitive treatment for the most harmful offenses, research shows that this approach goes a long way toward harming young people with little return on investment as it pertains to public safety. While transfer mechanisms were designed for the most serious cases, they

are often triggered by sentencing enhancements, including the possession of a firearm that does not involve an act of violence. Moreover, these practices have a detrimental impact on safety within facilities, damage reentry prospects, and worsen existing racial and ethnic disparities.

Public Safety Outcomes

The intended goal of transfer of youth to adult court was to increase public safety. The reality has been far more complicated. There is clearly no pattern between transfer mechanisms and reductions in violent crime. Looking across the states that provide data, it is clear that places with higher rates of transfer for violent crime do not experience lower crime rates. For example, Tennessee and Texas had very different transfer rates for violence (54 percent and 80 percent), but similar percentage of juvenile arrests that were for crimes of violence (7.2 percent and 7.1 percent). Several studies indicate only one state experienced a decline in crime as a result of transfers, and a few actually indicated a correlation with an increase in crime.²⁶

Nationally, there are very few states that report all adult transfers (regardless of mechanism) that are broken down by the offense category. This data is analyzed with caution due to the lack of information on outcomes. However, it is a representation that their percentage of violent crime varies dramatically, showing no correlation between the two.²⁷ (Table F)

Table F: Transfer correlation to Youth Arrests for Crimes of Violence

State	Percentage of Violent Crime Transfers	Percentage of Youth Violent Crime Arrests
Arizona	82%	5.5%
California	73%	16.8%
Florida	59%	6.7%
Indiana	81%	7.0%
New Jersey	56%	7.6%
Ohio	66%	4.4%
Oregon	55%	4.1%
Texas	80%	7.1%

The Centers for Disease Control and Prevention Task Force on Community Preventative Services concluded that transfer policies are “counterproductive for the purpose of reducing violence and enhancing public safety.” Of the studies the CDC analyzed, the median effect of increased violent or general crime for transferred youth was 34 percent more than similar youth who were retained in the juvenile system.²⁸ In fact, research demonstrates that youth adjudicated for an offense, even an act of violence, who are served in the community are significantly less likely to re-offend than if they were incarcerated.²⁹ Our adult criminal justice system is already plagued by high recidivism rates. The latest data indicate a 68 percent re-arrest rate after three years, and 83 percent after nine years.³⁰ Without appropriate programming and services, youth in the adult court have even less success.

High rates of recidivism and a system-wide failure to protect public safety is why a focus on community supervision is supported by portions of the crime victim community. Research conducted by JPI and the National Center for Victims of Crime found that victims frequently prefer a youth be held accountable and served through a community-based alternative.³¹ It allows the individual to address the harm caused and work to repair the damage, while reducing future criminality and future victimization through engagement with treatment and services. These findings are consistent with public opinion research conducted by the Alliance for Safety and Justice.³²

The research also recognized that many young people who engage in a violent act are overwhelmingly victims of crime themselves. Establishing community-based treatment and services is central to disrupting the cycle of crime and violence and begin the healing process.³³

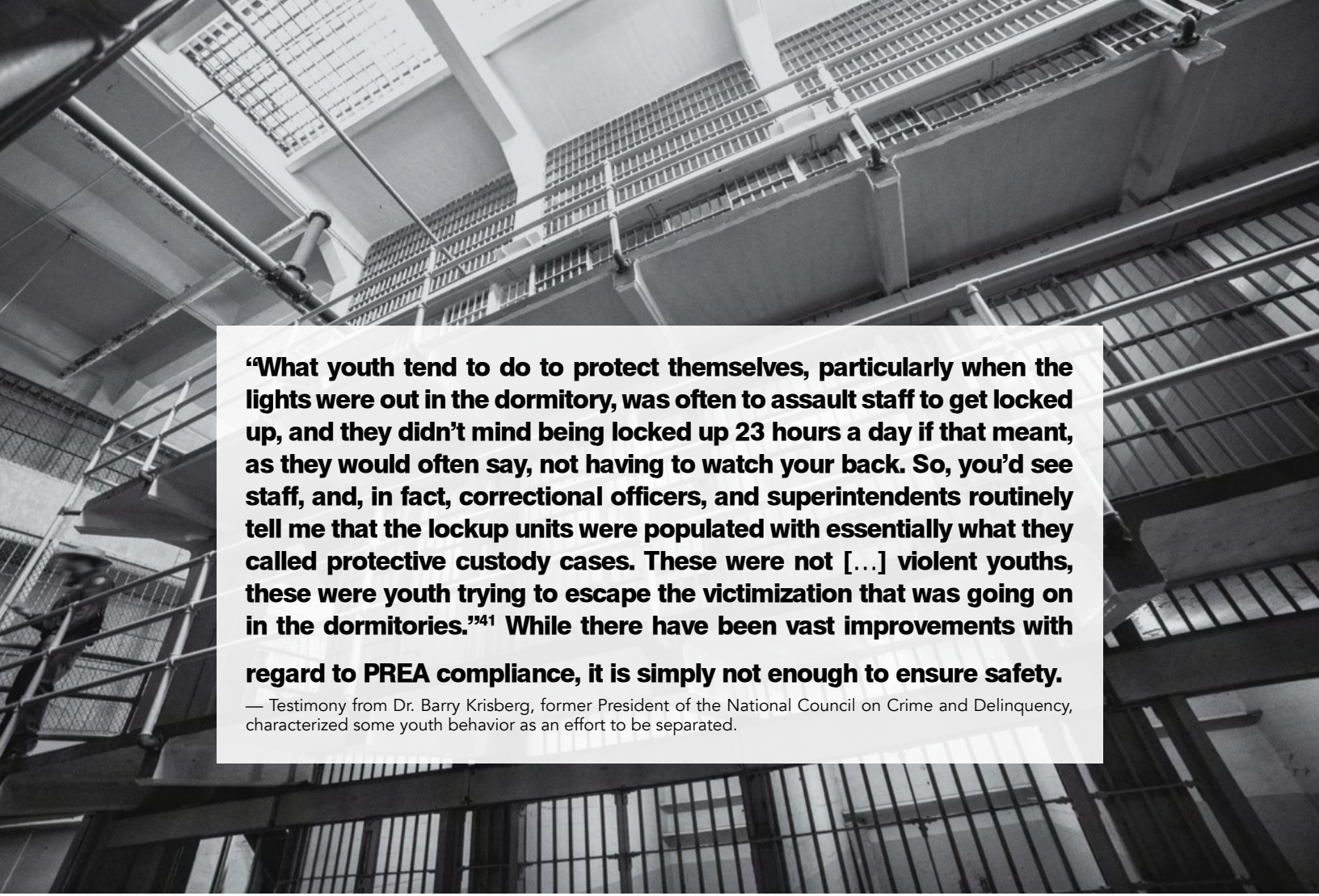
“Our adult criminal justice system is already plagued by high recidivism rates. The latest data indicate a 68% re-arrest rate after three years, and 83% after nine years.”

Ultimately it is about protecting public safety and preventing future victims, and the research shows that community-based interventions do this far more effectively than transfer into the adult system. For example, youth prosecuted in Wisconsin’s adult criminal justice system were re-incarcerated at a higher rate than adults in the criminal justice system or youth retained in the juvenile justice system. Within three years, re-offense rates were more than two times that of adults.³⁴ Looking at 15 states across the country, 82 percent of youth released from the adult system were re-arrested, 16 percent higher than their adult counterparts within a three year period.³⁵

Historical data trends suggest that when youth are re-arrested after serving adult time, it is typically the result of a serious, violent offense.³⁶ A study of 400 automatically-waived youth in New York and those retained in the juvenile system in New Jersey found that New York’s youth were 39 percent more likely to be re-arrested for a violent offense.

The results are further worsened for youth transferred for a violent offense. Nearly 80 percent of 600 youth in Pennsylvania who were transferred for robbery, aggravated assault, or both, had a greater likelihood of a violent felony arrest after release compared to those with similar offenses who were kept in the juvenile justice system.³⁷

In 2018, a 36-month recidivism analysis in Oregon found that 22 percent of youth who completed their sentence in the youth justice system recidivated, compared to 38 percent of those who served their time in the Department of Corrections.³⁸ This helped move Oregon’s legislature to end statutory exclusion in 2019.



“What youth tend to do to protect themselves, particularly when the lights were out in the dormitory, was often to assault staff to get locked up, and they didn’t mind being locked up 23 hours a day if that meant, as they would often say, not having to watch your back. So, you’d see staff, and, in fact, correctional officers, and superintendents routinely tell me that the lockup units were populated with essentially what they called protective custody cases. These were not [...] violent youths, these were youth trying to escape the victimization that was going on in the dormitories.”⁴¹ While there have been vast improvements with

regard to PREA compliance, it is simply not enough to ensure safety.

— Testimony from Dr. Barry Krisberg, former President of the National Council on Crime and Delinquency, characterized some youth behavior as an effort to be separated.

Facility Outcomes

Subjecting young people to incarceration frequently results in victimization and trauma that lead to lifelong consequences.³⁹ A 2011 report shows that 66 percent of 16 and 17 year olds who reported being sexually victimized while incarcerated, were victimized more than once.⁴⁰

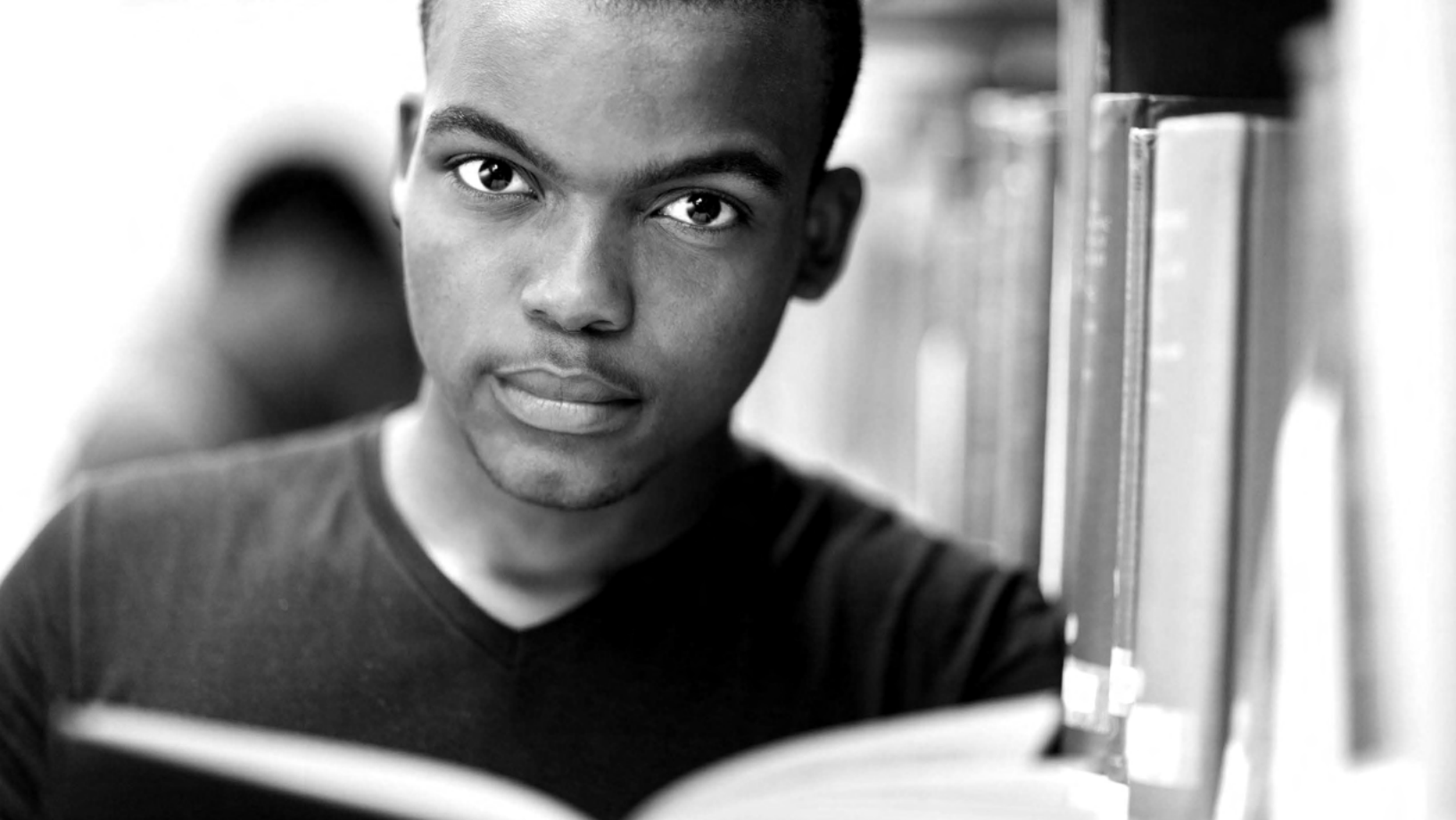
Despite the passage of the Prison Rape Elimination Act (PREA) in 2003, those under 18 incarcerated in adult facilities are still at an elevated risk for sexual and physical assault. As a result of facility officials being ill-equipped to protect youth in adult facilities, they will often take matters into their own hands in an effort to escape the brutality.

Adult prison facilities were designed without the perspective of a youth’s individualized needs. In many cases, a facility does not allow for ‘sight and sound separation’ from the adult population, which can impact access to adequate programming. Despite the progress of PREA compliance, youth are still extremely vulnerable to physical assaults and rely on separation as a solution.⁴²

The combination of being separated and potentially isolated

plays a role in the increased risk of suicide. While available data are limited, the Bureau of Justice Statistics reports that incarcerated people 17 and under in jails had one of the highest rates of suicide of any population, 49 per 100,000 from 2000 to 2014.⁴³ Moreover, youth in jails are 19 times more likely to commit suicide than those not incarcerated.⁴⁴ Even short stays in an adult jail put youth at a high risk for suicide. Forty-eight percent of suicides within an adult jail occur during the first week, with nearly a quarter occurring in the first two days of incarceration.⁴⁵

Adult facilities are no place for children. With conditions that are often unconscionable for adults, jails and prisons are even more dangerous for young people. An extremely high risk for sexual and physical assault, increased likelihood of suicide, and staff’s inability to ensure a youth’s safety contribute to adult facilities being an unacceptable place for any child. These placements have life-long consequences. Recognizing these facts, in 2018, the US Congress updated the cornerstone federal law that exists to protect children in custody, the Juvenile Justice & Delinquency Prevention Act. The new legislation calls for ALL youth (even those charged as adults) to be removed from adult jails by 2021.⁴⁶



Life Outcomes

The Positive Youth Justice (PYJ) framework is part of a transformation in the juvenile justice system that focuses on non-justice related outcomes as a measure of success. The concept centers on an individual's assets for personal growth away from anti-social behavior toward becoming a valued community member. It focuses on six domains: *work, relationships, health, education, community, and creativity.*

The number of youth in adult jails and prisons remains a small fraction of the total population, thus funding developmentally-appropriate programs for youth has historically been a low priority. According to a Bureau of Justice Statistics report in 2003, 40 percent of jails offered no educational services or programming and less than 7 percent offered some vocational training.⁴⁷ More recently, the Southern Poverty Law Center released a report about Florida, a state which prosecutes more children in the adult criminal justice system than any other.⁴⁸ They concluded that Florida's jails are failing to meet their legal obligations to provide educational services to youth. Issues included shortened school services that do not meet the required time minimums, inability to accommodate those with disabilities, and youth receiving no credit for their work that had been successfully completed while being held in jail.⁴⁹

Access to adequate educational services is imperative to the future success of anyone, especially those with a history of involvement in the justice system.⁵⁰ Those charged with violent offenses in adult court are usually placed in older and

larger facilities with higher security protocols. Staff working in these types of facilities often struggle to provide the sophisticated programming needed for youth development both because of lack of appropriate training and physical plant constraints.⁵¹

When youth eventually return to their communities, the consequences of prosecution and incarceration in the adult system continue. Because adult criminal records are not automatically expunged and are not confidential, as they typically are in the juvenile court, the effects of waiving or transferring young people into adult court can follow youth for the rest of their lives. According to the National Juvenile Defender Center, collateral consequences for youth can include disqualification from accessing public benefits and housing, inability to serve in the military, limited employment opportunities, and an increased social stigma.⁵² Additionally, individuals may have trouble securing government loans to pursue higher education and will be required to disclose convictions on most school applications.⁵³

Existing research suggests that justice involvement during the adolescent development years is associated with overall worsened health, including stress-related illnesses such as hypertension or obesity during adulthood. Such ailments potentially decrease an individual's life expectancy.⁵⁴

When certified as an adult, youth are less likely to receive programming rooted in PYJ, and are offered programming not suited for their developing needs. This significantly reduces the likelihood of successful reentry.

Black youth represented approximately

54%

of all youth who were judicially waived to adult court and...

58%

of youth transferred to adult court for persons offenses

Meanwhile, White youth accounted for

31%

and...

26%

respectively

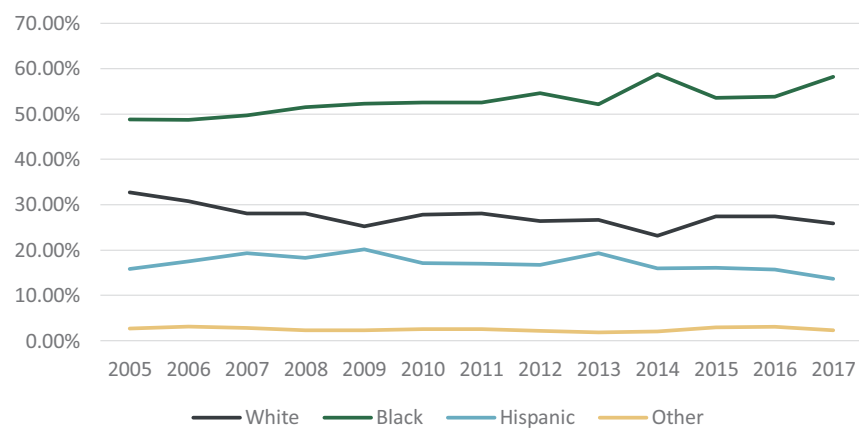
Racial Disparities Outcomes

Black youth are more likely to be admitted to prison for violent offenses.⁵⁵ According to a 2017 American Communities Survey, Black individuals under the age of 18 comprised 14 percent of all youth, while White youth accounted for approximately 68 percent.⁵⁶ Despite this, Black youth represented approximately 54

percent of all youth who were judicially waived to adult court and 58 percent of youth transferred to adult court for persons offenses according to national data in 2017; the biggest gap in disparities in forty years.⁵⁷ Meanwhile, White youth accounted for 31 percent and 26 percent respectively.⁵⁸ Thus, Black youth are disproportionately affected by waivers and transfers to adult court, particularly when it is for a violent offense.

The percentage of Black youth waived to adult court for violent

Table G: Percent of Youth Waived to Adult Court by Race



offenses was the only group to increase in judicial transfers to adult court between 2016 and 2017. (Table G)

In short, the practice of transferring youth has decreased dramatically since the mid-2000s. Despite these improvements in policy and practice over the last two decades, there has been an increase in the percentage of youth waived for violence, disproportionately among youth from

communities of color. This disparity occurs despite research showing that all young people have similar rates of risk-taking behavior. As part of a self-report study by the Centers for Disease Control and Prevention, Black (9.6 percent) and Latino (6.5 percent) youth males, carried a firearm at similar rate to white youth (9.6 percent). The transfer disparity is not an indication of increased offending by black youth, but issues within the transfer mechanism.⁵⁹



Recommendations

Eliminate transfer mechanisms for all youth, regardless of the committing offense.

The criminal justice system was designed for adults – not for youth under any circumstances. The adult system lacks educational services and other age-appropriate programs that support youth mental and physical development, which in turn impacts the likelihood of successful reentry. Eliminating adult court transfers and shifting supervision toward age-appropriate, rehabilitative-focused interventions in the juvenile system will increase public safety. Deep-end youth facilities are already handling some serious cases, such as robbery, assault, and homicide. While not perfect, these settings are far more appropriate and more effective than the adult system.

Adolescent development research shows that youth continue to develop cognitively into their mid-20s, with youth-like characteristics of heightened impulsivity, greater risk-taking, and impaired judgement remaining prominent until that age. To better align with these findings, some states have eliminated some automatic exclusions from the juvenile justice system. Some states, like Connecticut, Colorado, Illinois, and Massachusetts, are now exploring the possibility of expanding such exclusion efforts to emerging adults above the age of 18. Vermont has already made such strides, increasing its jurisdictional age to 20 beginning in 2022.

While there have been reform efforts around automatic exclusion, other transfer tools remain readily available and largely unchallenged. It is important to note that children sentenced to

adult court receive an adult criminal record. These offenses are not automatically concealed and often play a barrier in securing adequate employment, education, military service, and student financial aid.

To improve safety outcomes for everyone, no crime committed by a child should result in adult court transfers. Rather, the juvenile justice system should serve all youth during their developmental years, ideally into their mid-twenties.

Use community-based programming as a first choice, and any type of age appropriate confinement as a last resort.

When adequately supported and facilitated, community-based programming garners better outcomes than confinement for everyone: justice-involved youth, community members, and victims. The research clearly shows that the same youth disproportionately subjected to transfers for violent offenses can be more appropriately managed in the community. These programs are shaped by local stakeholders with direct parallels to the community's values and culture, with the goal of reducing future justice involvement. These alternatives have been successful with those charged with serious violent offenses, ranging in ages from 16 to 24 years old.⁶⁰ The growth in these community-based options is partially a result of support from law enforcement, prosecutors, and the victim's community.⁶¹

Incarceration in adult prisons leads to higher recidivism rates than those served by the juvenile justice system. The Pathways

to Desistance study found that an individual's persistence into future criminal activity is not based on the presenting offense, but about the specific risks posed by an individual. Adult courts are ill-suited to account for a child's risks and needs, or to develop an age-appropriate rehabilitation plan. Conversely, youth-focused community alternatives are rooted in the principles of Positive Youth Justice (PYJ) and contribute to lower youth crime and recidivism rates. PYJ focuses on personal accountability and builds on young people's strengths. It seeks to address the root issues that led a youth to be involved in the justice system in the first place by lifting barriers and connecting them to necessary resources. Other restorative justice programs across the nation have also resulted in reduced recidivism rates and safer neighborhoods.

Moreover, many victims of crime do not prefer confinement. The Justice Policy Institute and the National Center for Victims of Crime solicited input from crime survivors and crime victims' advocates. The discussion was focused on how to serve youth effectively who have committed crimes of violence. Key takeaways from the conversation included that accountability does not equal confinement, and any community treatment needs to be effective at reducing future criminality and victimization.⁶² Similar findings have been supported by other national surveys.⁶³ For all children, regardless of the offense, many crime survivors prefer programming that meets the needs of the individual, strengthens families, and addresses the underlying causes of crime. These restorative, community-based programs engender accountability and aid in avoiding future victimization.

Increase investments in approaches that address the needs of individual and community-level victimization and increase prevention and intervention by establishing public health partnerships to reduce violence.

Despite the success of a community-based, treatment-focused model, most resources are still dedicated to confinement and there is significant underinvestment in the approaches that most effectively reduce youth violence and address the harms of crime. According to the National Crime Victimization Survey, those most likely to experience crime are often least likely to access services. For example, only 12 percent of victims of serious violent crime receive support.⁶⁴

There is a connection between those least likely to receive victimization services and those currently incarcerated. Take Florida's system, for example. Tracking Adverse Childhood Experiences (ACEs) is one way to determine an individual's past trauma and victimization. Untreated ACEs can lead to negative consequences, including increased risk of future criminal justice involvement. An analysis of Florida's juvenile justice system illustrates the entanglement of victimization and justice-involved youth; 98 percent of Florida's confined population had reported four or more ACEs, and the remaining two percent reported at least one ACEs.⁶⁵ Trauma recovery centers are an effective, yet underfunded, tool to address these harms of

crime and victimization. They aim to assist people suffering from trauma, violence, and loss by providing mental health and medical services. Trauma recovery centers also seek to address barriers that victims of violent crime face, such as working with law enforcement and receiving adequate support to address their needs.

Funds should also be reallocated from incarceration to support proven public health prevention strategies. These programs target communities of color, where crime and incarceration occur at higher rates. This new, concentrated focus on violent crime would decrease the number of children transferred to the adult court and shift wasted prison resources to help scale community-level programs that serve more neighborhoods plagued by violence.

Use risk and needs assessment tools in decision-making around placement and length of stay.

Youth are typically incarcerated or waived into adult court based solely on the nature of the underlying offense rather than an assessment of both their needs and risk of future harm to the community. A risk and needs assessment can provide decision makers vital information to tailor a community-based response that addresses the cause of the behavior while also avoiding the imposition of often harmful confinement on a youth.⁶⁶ If this practice was standardized, we could see a significant decrease in transfers for all types of offenses.

Some of these tools are beginning to measure previous exposure to traumatic events. This level of understanding would help connect individuals to appropriate treatment services and expand trauma-informed care practices.

These tools are not a panacea. They do not replace the need for a trained justice professional to make an individualized judgement. They also must be carefully validated and reviewed to ensure that they accurately assess risk and do not exacerbate existing racial or ethnic biases present in other parts of the system. Nonetheless, risk and needs assessment tools can better inform decision makers about the most appropriate setting and interventions for youth who have engaged in violence.

Increase age-appropriate resources for youth who are subjected to secure confinement.

The ultimate goal should be to eliminate any mechanism that leads to youth entering the adult criminal justice system. However, as long as transfers occur, adult facilities need to invest in children's futures by expanding education, recreation, mental health, and workforce opportunities. The absence of such programs prohibits crucial emotional and physical growth and increases the risk of recidivism. They may also violate federal IDEA (Individuals with Disabilities Education Act) law for youth who had identified disabilities prior to their arrest. All children in the adult system, regardless of security level or committing offense, need age-appropriate resources to help them develop.



Conclusion

The juvenile justice system has undergone dramatic changes over the last two decades. The era of “super predators” and punitive policies and practices that increasingly treated children like adults has been supplanted by falling crime rates and a focus on diversion and community-based interventions that are more effective at addressing underlying needs of youth while also protecting public safety.

Unfortunately, the news is not all positive. One vestige of that prior era remains with regard to youth who engage in violent behavior. Too many states still rely on confinement and transfer to the adult system. While all youth are at risk of being transferred or excluded from the juvenile court, depending on jurisdictional law, there is an evolving focus on youth who commit acts of violence. This is despite the fact that the research clearly shows youth are better served in the community regardless of the underlying conduct.

The harms of confinement and transfer of children into the adult system actually drive higher rates of recidivism. Moreover, it exacerbates racial disparity as youth of color are more likely to be transferred into the adult system for violent behavior.

It is time that policy makers follow the research and substantially reduce the number of youth placed in secure confinement or the adult system for acts of violence. States should be employing evidence-based and validated risk and needs instruments to identify appropriate interventions that address the cause of the behavior in the least restrictive setting that is safe. This approach is supported by many victims of crime who recognize that simply incarcerating youth or transferring youth to the adult system fails to protect public safety and can contribute to future victimization.

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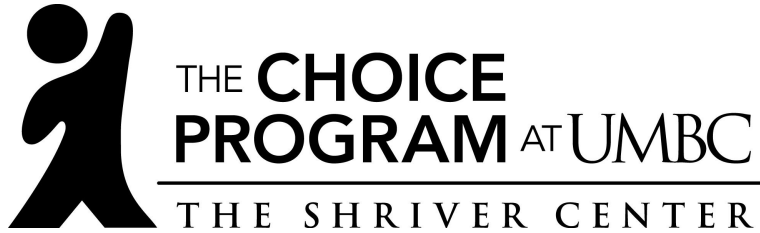
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Choice SUPPORT SB 165 .pdf

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Position: FAV



SENATE BILL 165
Juvenile Court – Jurisdiction
Ending Automatic Charging of Youth as Adults

January 27, 2022
POSITION: SUPPORT

Dear Chairperson Smith and Honorable Members of the Committee:

The Choice Program at UMBC supports Senate Bill 165 introduced by Senator Jill Carter. We urge the Senate Judicial Proceedings Committee to issue a favorable report on this bill.

The Choice Program at UMBC has served Maryland youth who are systems-involved for nearly 35 years. Presently, Choice works with young people and their families in Baltimore City as well as Baltimore, Howard, Prince George's, and Montgomery Counties. Young people often remind us that their past trauma—and worst mistakes—should not define them. In FY 21, we provided engaging programming, resource brokering and holistic case management to **656** young people who were under the supervision of the Department of Juvenile Services; we served **850** young people in total. Despite a year of Covid in which we offered remote services, Choice mentors contacted young people **24,455** times via video, text, phone calls for visits, goal setting activities, job searches, homework help, community service, games, and wellness checks. Choice serves as an alternative to the school-to-prison pipeline; our primary goal is to reduce the number of Black and Latinx young people who are entangled in the youth legal system. Our model seeks to dismantle racist structures and, instead, employs strengths-based approaches focused on positive relationships and their agency. We hold high expectations for youth and parents as well as high levels of support. These guiding principles are essential in addressing racial inequities at an individual and systemic level.

Maryland's legal system disproportionately ensnares Black and Latinx young people, limiting their life chances in education, vocation, civic engagement, and health and wellbeing. A punitive criminal justice system does not offer young people developmentally appropriate and culturally responsive interventions; it exacerbates stubborn inequities. And, it does not keep Marylanders safer. This session offers the chance to remake our youth legal system to reduce racial and ethnic disparities.

Maryland sends more young people per capita to adult court based on offense type than any other state except for Alabama.¹ That is why Maryland ranks worst in the country for protecting the rights of young people in the legal system.² A major reason is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses – putting us out of step with other states and international human rights law. Last year, Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined. A staggering 93% of those were youth of color.

In Maryland, youth as young as 14 can be tried in adult court depending on what charge a police officer decides to levy against them. When young people are automatically charged in adult court, they are more likely to re-offend, sooner, with more violent crime than children who are charged in juvenile court. This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried in adult court reflect and reinforce the racial inequities that characterize the justice system in the United States.

Our Legal System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the Maryland court system.³ Rampant racial inequities are evident in the way youth of color are disciplined in school, policed and arrested⁴, detained, sentenced, and incarcerated.⁵ These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than white youth charged with similar offenses.⁶ Youth of color are more likely to be tried as adults than white youth, even when being charged with similar crimes. In Maryland between 2017-2019, 93% of young people tried as adults were youth of color; 80% were Black.⁷

“Tough on Crime” Laws Criminalize Youth and Make Us Less Safe

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile

1

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

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criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that young “super-predators” posed a significant threat to public safety. Professor John Dilulio, the social scientist who coined this phrase, has disavowed it. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

We can and must treat our children better. Maryland should join the 26 other states who have passed laws **to treat kids like kids** and **end automatic charging**.

The Choice Program at UMBC respectfully urges this committee to issue a favorable report on SB 165.

Testimony HB 0294 and SB 0165 - Watts Zaragoza.pdf

Uploaded by: Kimberlee Watts

Position: FAV



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KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: SB 0165 (CROSS-FILED WITH HB 0294)

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: January 24, 2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 0165.

I am an attorney with the Office of the Public Defender, and I am offering this testimony on behalf of my client Andrew Zaragoza. Andrew is currently in the Division of Corrections' Patuxent Youth Program and has no access to internet in order to be able to submit his own testimony and share his experience as a child who was prosecuted in adult court. But first, let me introduce him and give you a little bit of background information.

Mr. Zaragoza is now 21 years old, but when I first met him he was a 16 year old charged with murdering his mother. He bore scars from where his mother had stabbed his chest, and on his throat where he had tried to kill himself. The social worker supervisor from Child Protective Services who was investigating his case at that time was seeing the dissociative symptoms associated with Post-Traumatic Stress Disorder to such a significant degree that she had to get him PTSD specific therapy in order to complete her investigation. Her investigation was the first time anyone from CPS had talked to him without his abusive mother being present, despite the fact that a CPS worker had been to the house one month before he killed his mother, and 2 years before that in 2015. In fact, a month before her death his mother agreed to a safety plan with CPS, but she refused any services, and CPS allowed that to happen. Mr. Zargoza also sought the help of police over the course of several years. On one occasion police involuntarily hospitalized his mother- she had her own very serious issues with mental illness and drug addiction, but

despite the fact that he was barricaded in a room hiding from his mother and calling the police for help while his father tried to keep her out, police did not report this to CPS. In short, despite mandatory reporting laws, agencies, and systems designed to protect children the law did nothing to protect Andrew as the child that he was. But when he attempted to protect himself from the onslaught of physical and sexual abuse at the hands of his mother, and inadvertently killed her, the law automatically charged him as an adult without even the possibility of a transfer hearing. Although he was acquitted by a jury of First Degree Murder, he was convicted of Second Degree Murder. Because he was initially charged with first degree murder he was not eligible for transfer to juvenile court even at sentencing. Instead the most rehabilitative option the judge had was the Patuxent Youth program. Andrew Zaragoza is absolutely someone who can be rehabilitated, but now he's sitting at the division of corrections in a program that purports to be designed to rehabilitate children but doesn't even offer job training or the ability to attend online college programs. So instead of getting help to prepare to be a productive member of society, he is trying very hard not to stagnate, and not to give up hope for a better future. Despite the fact that he has nearly no family, he expresses gratitude for the friends he has and for his CASA- who is still working with him even though his DSS case is now closed. Instead of giving up and getting into trouble, he has had zero rule violations in an environment where it is very difficult to follow all of the rules perfectly. He's in a place where you can get in trouble for wearing a gray shirt instead of a white one- when the only white shirts you have are so old they look gray.

This is what I wanted you to know about my client, Andrew Zaragoza, and the following is what he would like you to know about how the current state of our laws have affected him.

Andrew Philip Zaragoza

Inmate ID:4544068

Patuxent Institution, Youth Program

7555 Waterloo Road

Jessup, MD 20794

I am asking you to pass HB 0294 and SB 0165 to end the automatic charging of kids as adults. I see some of my fellow inmates slowly sinking down even further. They're not getting what they need, they're getting high every day. They're lost. They're just doing things that rack up more time. Being in DOC isn't making them any better, or making anyone else safer.

I was 16 years old when I was arrested for killing my mother. I loved my mother, but she was mentally ill and addicted to drugs. I could always tell when she was high because she would make this horrible growling noise, take off her clothes, and walk around naked. When she was like this she often climbed naked on top of me if I was asleep in bed. Once, before my dad died, he and I had to barricade ourselves in a bedroom while she was high and she completely wrecked the house. I called the police for help, they sent her to the emergency room for a couple of days and then came back home. When she was on probation my parents made sure I never told her probation officer what was going on at home. My dad died of an overdose when I was 15, things got worse after that. My grand mom had lived in our basement and my mom kicked her out, and brought in a cousin and his boyfriend into the basement. They would all get drunk or high together. A couple of weeks before I killed her I called the police because the cousin's boyfriend hit me. A social worker from protective services came to the house, but she never talked to me alone, so I couldn't tell her about my mom. They put a safety plan in place, but my mom refused any other DSS services. When I was testifying at my trial, the prosecutor asked me why didn't I report the abuse. I told him reported the physical abuse- I had told my grandmom, I had told a close family friend, and because the abuse happened mostly when she was high they tried to get her to stop abusing her prescription medication. I called the police on more than one occasion, but nobody did anything. I tried to spend as much time as possible away from home, either at school, the gym, or friends' houses. I was in 11th grade, and in honors and AP classes. I wanted to move out of my parents house and go to college. I had never been in trouble with the law before.

On the night I killed my mother she came home late at night, clearly high. She started molesting me and I told her I had had it and was calling CPS. She stabbed me in the chest. It was at that point that I fought back and killed her. I hadn't wanted to kill her, I just wanted her to stop and I was afraid she was going to kill me. When I realized I killed her, I tried to kill myself. I texted goodbye to a few of my friends, one of whom called the police.

I was taken to the hospital and had surgery. At first I kept coming in and out of consciousness. I was handcuffed to the bed by one arm and had an IV in the other. I also had shackles on my ankles, and a catheter. I was not allowed to shower because I was in jail custody

& was deemed a security risk. I was only unshackled for a CAT scan, and the security guard complained about that. I was in the hospital for roughly 3 or 4 days.

Once I got to the detention center, they put me in a padded isolation room for 14 days because it was their protocol for someone who was suicidal. I was very mentally shut down. They put me on medication which wasn't particularly helpful, and took the staples out. The depression was so bad it was killing me, I just felt sadness, grief, and anger. I had to find a way to stop the running thoughts and do something productive. Even after I was off of isolation I was still in a cell alone for 23 hours per day until I turned 18 because they can't house adults and kids together. Being on 23 and 1 was mental agony. It's more than being bored. All you can do is write, read, sleep, and do pushups and sit ups. The cell was small- it was a double bunk with a toilet and sink. The door was metal with a small window at about eye level and a slot in the middle for guards to slide food to him. I spent about 18 months on 23 and 1, and for most of the time I was alone and didn't have a cell mate.

My lawyer asked me what it was like to be found guilty of second degree murder. As soon as the jury said it, I felt like I'd been punched in the sternum and the wind had been knocked. The county jail asked if I was suicidal, and even though I said no, they stripped me naked and put me in isolation. At some point they gave me a smock- but it didn't provide much warmth and it was January, and the room didn't really have heating. It was very demeaning, and made him feel vulnerable.

At the Patuxent Youth Program we're supposed to have therapy and modules to do to rehabilitate us. Therapy has been suspended temporarily because of omicron. I've been here two years, and even though I have no rule violations I still haven't started any of the modules. I've repeatedly asked for the anger management module- which I think would help me. With these therapists I've been trying to figure out how to build a future once I get out, but whenever I tell them what I think I need to work through, they wind up talking about institutional policies or the weather. When I was first locked up I was lost, but I was able to find myself and figure out how to move forward. After I was locked up, DSS got involved and I was found a Child in Need of Assistance. My DSS worker got the jail to let a therapist come see me, and she helped me put the past to rest, I don't struggle with it like I used to. Right now, my problem is getting angry too fast, but no one here is helping me find a solution.

I can't really say how things would have been different if I had been in juvenile court, because I've never been to juvenile court before. I wasn't even allowed to have a hearing to transfer to juvenile court. It felt unfair that I never got to have a hearing, and that I never had a day in court to prove that I was a juvenile and that I could be rehabilitated.

I was finally able to finish taking the GED in August- I passed all the parts on my first try. I was ready to take the GED before my trial but the county jail couldn't set it up. I've been at the Patuxent Youth Program since October 2019, it took until August 2021 for me to be able to take the GED. I'm hoping I can start college courses soon, but since we don't have access to computers it has to be through correspondence courses. I have a Court Appointed Special Advocate because of my DSS case, and she helped me find a college that still does correspondence courses, apply, and fill out the FAFSA forms. Hopefully I'll be able to start soon.

I think I can still have a bright future, but being charged as adult has made it a lot harder. I'm blessed that I have support. I see other people here who don't. They're not getting what they need, they're getting lost. We're young and can still change, but we need help and support. Automatically charging us as adults isn't getting us help or support, it's just making things worse.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 0165

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

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2022.01.25 OPD Favor SB165.pdf

Uploaded by: Krystal Williams

Position: FAV



BILL: Senate Bill 165
POSITION: Favorable
DATE: January 25, 2022

In Maryland, 15- and 16-year-olds can't go to an R-rated movie, vote in an election, buy alcohol or a lottery ticket, join the military, or enter into a legal contract.

But they can be charged and tried as an adult in court.

Children can automatically be charged in adult court for 33 separate offenses, based on charges levied by police, without taking into account their youth, development, or vulnerability.

Maryland is at a crossroads: the laws that shrunk the jurisdiction of juvenile court and expanded the automatic charging of children in adult court were passed as part of a “tough on crime” period in the late 80s and early 90s.¹ The years leading up to these changes involved race-based fear-mongering and false predictions of increased crime and the rise of “super-predator” youth. But trying children in the adult system has proven to do more harm than good. Research has in fact demonstrated that trying children in adult court does not decrease recidivism and in fact increases rates of criminality among youth.^{2,3} Furthermore, Black youth tried in adult courts receive significantly more punitive sentences than White youth.⁴

As a result of the harms these laws have caused, half of the states across the country have passed reforms narrowing or eliminating automatic pathways through which children are transferred to the adult court, granting increased judicial review and discretion in the transfer decisions.⁵ Kansas, Nebraska, North Dakota, Washington, Nevada, Colorado, Virginia, Connecticut, Rhode Island, and South Carolina have all narrowed automatic transfer provisions while Oregon, California, Illinois, Kentucky, Georgia, Florida, New Hampshire, and New Jersey have all ended an automatic transfer mechanism altogether. In 2018, the Maryland General Assembly convened a Juvenile Justice Reform Council (JJRC) and tasked it with using a data-driven approach to develop a statewide framework of policies to invest in strategies to increase public safety and reduce recidivism of youth offenders.⁶ That body met for more than two years, heard from a

¹1986 Md. Laws, Ch. 790, excluding from the original jurisdiction of the Juvenile Court a child charged with certain handgun offenses and 1994 Md. Laws, Ch. 641, excluding from Juvenile Court original jurisdiction 17 other offenses.

² Redding RE. Juvenile Transfer Laws: An Effective Deterrent to Delinquency? US Department of Justice, Office of Juvenile Justice and Delinquency Prevention; 2010. <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>

³ Mason C, Chang S. Re-Arrest Rates among Youth Sentenced in Adult Court. Juvenile Sentencing Advocacy Project; 2001. <http://ncfy.acf.hhs.gov/library/2001/re-arrest-rates-among-youth-sentenced-adult-court>.

⁴ Jordan KL, Freiburger TL (2010) Examining the impact of race and ethnicity on the sentencing of juveniles in adult court. *Criminal Justice Policy Review* 21: 185–201.

⁵ Evans, Brian (2020). “Winning the Campaign: State Trends in Fighting the Treatment of Children as Adults in the Criminal Justice System,” *The Campaign for Youth Justice*: Washington, D.C. p. 8. Note: In 2021, Kentucky also ended mandatory waiver, bringing the number of states to 25.

<http://cfyj.org/images/reportthumbnails/CFYJ%20Annual%20Report.pdf>.

⁶ Maryland HB606: 2019: Regular Session



myriad of local and national experts, studied the statutes and the data available. After conducting an exhaustive review, the JJRC overwhelmingly voted (13-3) to recommend an end to the automatic charging of children in adult court. SB165 is the result of those recommendations.

This bill does prevent children from being tried in adult court. SB165 only requires that children have their case *start* in juvenile court so that a Judge can take an informed look at the circumstances of the case and the child, weigh the constitutionally required factors⁷, and decide if the case belongs in adult or juvenile court.

The Current System is Broken & Causing Irreparable Harm to Youth of Color

Maryland sends more young people, per capita, to adult court based on offense type than any other state except for Alabama.⁸ Only nine states send more than 200 youth per year to adult court, Maryland routinely sends four times that amount.

Most of the children we charge in adult court are Black or Brown. As a technical assistance provider for the JJRC, the Vera Institute of Justice examined data related to youth charged in adult court between 2017 and 2019. Vera found that in MDEC counties youth of color made up 79% of youth charged in adult court, but only 51% of youth transferred to juvenile court.⁹ White youth made up only 21% of kids charged in adult court in MDEC counties, but 49% of youth who are transferred down. Black children made up 72% of kids charged in adult court in MDEC counties but only 39% of kids who are transferred down. Which means, white youth had their cases transferred down 94% of the time compared to only 26% for youth of color. Black youth had the lowest rates of transfer - at only 22%.

Yet nearly 9 out of 10 of those children (87%) initially charged as adults do not end up with an adult criminal conviction.¹⁰ Nearly half (43%) have their cases transferred and another third (35%) are dismissed outright. Under the current law, Maryland is charging an inordinate amount of Black and Brown children in adult court. In FY20, Maryland sent more children to adult court than Arizona, Massachusetts, California, and Pennsylvania combined. Those states have nearly 10 times Maryland's population. This practice, and the damage done primarily to Black and

⁷ *Kent v. United States*, 383 U.S. 541 (1966) established the Constitution requires the court to conduct a "full investigation" and "set forth the basis for the order" to waive a child to adult court. The statutory factors a court considers in both waiver and transfer hearings are (1) the age of the child; (2) the mental and physical condition of the child; (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children; (4) the nature of the alleged crime; and (5) the public safety.

⁸ The Sentencing Project, National Trends in Charging Children, *Presentation to the JJRC* (July 20, 2021). <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

⁹ *Id.* The Committee should note that this data only includes 21 Counties and Baltimore City. Due to lack of data collection, the analysis did not include Prince George's or Montgomery County – two of the largest jurisdictions in the state.

¹⁰ Vera Institute of Justice, *Preliminary Findings: Youth Charged as Adults in Maryland*, Presentation to the JJRC December 10, 2020, pg. 13. <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>



Brown young people, who are ultimately not convicted in adult court may be a major contributing factor to why Maryland’s imprisons a higher percentage of Black people (70%) than any other state in the nation.¹¹

More than 95% of children automatically charged in adult court¹² are eligible for a transfer hearing.¹³ A “transfer” involves moving a case from adult down to juvenile court, while a “waiver” involves moving a case from juvenile up to adult court. A court must consider five statutory factors in any waiver¹⁴ or transfer¹⁵ decision: (1) the age of the child; (2) the child’s physical and mental condition; (3) the child’s amenability to treatment in any institution, facility, or programs available to delinquents; (4) the nature of the offense(s); and (5) public safety. To assist in the consideration of these factors, the transfer statute provides for a court-ordered study, usually conducted by the Department of Juvenile Services (DJS).¹⁶

When a child is automatically charged in adult court, the five factors are not considered until the transfer hearing. In FY20, detained youth charged in adult court waited an average of 154 days in from the time they were charged until their transfer hearing.¹⁷ Federal law now prohibits transfer-eligible youth from being housed in adult jails until a judge determines they are eligible to be tried in adult court.¹⁸ However, Maryland is out of compliance with federal law and many children are housed in adult jails throughout the state. Studies show that youth held in adult facilities are 36 times more likely to commit suicide and are at the greatest risk of sexual victimization.¹⁹

While most children charged in adult court will not end up in adult prison, while they wait for transfer hearings they are not receiving treatment, rehabilitation, or therapy. Juvenile incarceration is shown to erode mental health, lead to social and economic disadvantages related to stigma, disrupted social networks, expose children to more criminogenic peers, and contribute to the higher rates of fatal drug overdose, suicide, and posttraumatic stress. Finally, incarceration may compound existing socioeconomic and psychosocial health risks in vulnerable populations. “Any incarceration during adolescence or young adulthood is associated with worse general

¹¹ Justice Policy Institute, Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland, 2019. <https://justicepolicy.org/research/policy-briefs-2019-rethinking-approaches-to-over-incarceration-of-black-young-adults-in-maryland/>

¹² Maryland Courts and Judicial Proceedings Section 3-8A-03.

¹³ Children over 16 charged with first degree murder are currently not transfer eligible. MD Crim. Pro Code § 4-202 (2013).

¹⁴ Courts and Judicial Proceedings Article § 3-8A-06(e)

¹⁵ Criminal Proceedings Article § 4-202(d)

¹⁶ Criminal Proceedings Article § 4-202(e)

¹⁷ Dept. of Juv. Services, Data Resource Guide FY2021, Youth Charged as Adults Pending Transfer, 130. https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf

¹⁸ Juvenile Justice and Delinquency Prevention Act Reauthorization 2018

¹⁹ Campaign for Youth Justice. Key Facts: Youth in the Justice System. June 2010, <http://www.campaignforyouthjustice.org/images/factsheets/KeyYouthCrimeFactsFeb222018Revised.pdf>



health, severe functional limitations, stress-related illnesses, such as hypertension, and higher rates of overweight and obesity during adulthood.”²⁰

As the *Special Committee on Juvenile Courts* declared over 50 years ago in 1966, “[N]othing positive is accomplished by subjecting a child who will ultimately be treated as a juvenile to all the pre-trial aspects of the adult criminal procedure.” Indeed, “nothing is lost by giving the Juvenile Court original and exclusive jurisdiction over children through age 17 with the power to waive to the Criminal Court.”²¹

This bill will correct a backwards process. The current law requires large numbers of children to be charged in adult court, wait for long periods of time in detention, only to have their cases dismissed or transferred to the juvenile system. Opponents of ending the automatic charging of youth in adult court argue public safety and the serious nature of some cases involving youth demand maintaining the status quo. Ending automatic charging may not lead to any fewer children convicted in adult court. Of 871 cases of children charged in Maryland adult court, only 110 of them resulted in adult criminal conviction.²² Almost all of the remaining 761 cases, however, went through the lengthy, expensive, and resource intensive transfer hearing process. In some of those cases, the SAO agreed to transfer, in others there was lengthy litigation before a Judge ultimately granted the transfer motion. By ending automatic charging, this bill would allow prosecutors to choose the cases where they want to dedicate their resources, time, and effort to argue a waiver motion. With fewer first-time offenders and other youth appropriate for the rehabilitative practices of juvenile court being processed through the criminal court system, the State could very well focus their energies more effectively and end up convicting more children in adult court.

Maryland’s current system of automatic charging encourages police and prosecutors to overcharge children. For example, of 314 cases where a child was charged with Assault in the 1st degree only 17 resulted in an adult criminal conviction.²³ Ninety-five (95%) of 1st degree assault cases where children are charged in adult court did not result in an adult criminal conviction. The current law allows the charging police officer to determine which children are subject to adult jurisdiction, thereby incentivizing overcharging as a way to coerce a plea.

This bill will streamline the system. The amount of time that passes between an initial appearance in juvenile court to a waiver up hearing is much shorter (30-60 days) than the process of charging a child in adult court and transferring them down (120-150 days). Ending automatic

²⁰ Elizabeth S. Barnert, et. al. *How Does Incarcerating Young People Affect Their Adult Health Outcomes?* Pediatrics. (2017). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5260153/#>

²¹ Report of the Legislative Council Special Committee on Juvenile Courts, January 1966 (occasionally referred to as the “Rasin Report”)

²² Vera Institute of Justice, *Preliminary Findings: Youth Charged as Adults in Maryland*, Presentation to the JJRC December 10, 2020, pg. 13. <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>

²³ Vera Institute of Justice, *Preliminary Findings: Youth Charged as Adults in Maryland*, Presentation to the JJRC December 10, 2020, pg. 13. <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>



transfer limits the time young people who will ultimately have their cases adjudicated in juvenile court or dismissed spend in pre-trial detention and ensure that those young people deemed appropriate for rehabilitation start those services as quickly as possible.

Automatic Charging Is a Risk to Public Safety

Supporters of the punitive reforms of the status quo argue automatic charging of children is necessary to protect the public, but we know definitively that

“[T]ransfer to the adult criminal justice system is associated with subsequent violence among juvenile participants when compared with violence among juveniles retained in the juvenile justice system...little evidence supports the idea that transfer laws deter juveniles in the general population from violent crime. These policies might be favored by policymakers or the public for other reasons (e.g., societal retribution in response to serious crime or incapacitation of serious offenders). However, the review indicates that use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety.”²⁴

In other words, charging kids in adult court is likely to increase recidivism and “increase the social cost of juvenile crime.”²⁵

The weight of evidence shows that youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be rearrested for violent or other crime.²⁶ In Maryland, people leaving the adult prison system have a 40% re-incarceration rate compared to a 17% re-incarceration rate for youth transferred from adult court to juvenile court who ended up under DJS supervision.

Neurodevelopmental immaturity leads young people to commit more crimes than their elders, because the prefrontal cortex (aka the seat of reasoning) is the last region of the brain to reach structural maturity. As such, a person under 18 have not developed the same control over their moral reasoning, judgment, impulse control, planning, character, and behavior that adults have. But that same neurodevelopmental immaturity is also an asset – the young brain’s plasticity means that young people are more susceptible, and successful, when offered comprehensive, evidence-based services geared at rehabilitation. Programs that focus on counseling, skill-building, and restorative justice (like those provided in the juvenile system) have been shown to

²⁴ <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

²⁵ Reforming Juvenile Justice, 134. <https://www.nap.edu/read/14685/chapter/1>

²⁶ *Effects on Violence of Laws and Policy Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System*, American Journal of Preventative Medicine, April 2007
<https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.



reduce youth recidivism by an average of ten (10) percent, while primarily supervision-based programs (like probation in the adult system) reduce recidivism by just one (1) percent.²⁷

Ending Automatic Charging is Common-Sense, Happening Across the U.S.

As of 2021, there are seven states that require all youth under age 18 to originate in family court for all charges, with the juvenile court judge retaining full discretion over whether the youth is waived to adult court. This includes California, Hawaii, Kansas, Kentucky, Missouri, Rhode Island, and Tennessee. Texas requires a full hearing for every child in juvenile court, though all 17-year-olds are still charged as if they were adults there.

In California, it's been more than 5 years since the 2016 voter initiative known as Prop 57 eliminated all forms of waiver that do not include full judicial discretion. Two years later, the state raised the floor for judicial transfer to age 16; as a result, transfers have dropped from several hundred a year to under 50.²⁸ California has an estimated population of 39.5 million or 6x larger than Maryland.²⁹

In Illinois, bi-partisan legislation in 2015 shifted their process from an “automatic” adult court case based solely on age and charge, to a due process hearing with an individualized review of the probable cause for the charged offense and of the strengths and needs and risks of the child charged with the offense. After Illinois’s reform, which narrowed transfer eligibility to children age 15 and older while also shrinking the number of offenses for which a child had to be charged as an adult, was ruled retroactive, 186 cases of children in Cook County who had been automatically charged as adults were reviewed by prosecutors and the courts. Ultimately only 3 of those cases were transferred to adult court, while 6 others resulted in a suspended adult sentence.³⁰ Illinois demonstrates how many inappropriate cases are swept into the adult system by automatic transfer laws.

Vermont also ended its direct file statute.³¹ Prior to the law change, 16- and 17-year olds could be directly charged into adult court for any charge at the discretion of the prosecutor. In 2018,

²⁷ Lipsey, M. W. (2009). The primary factors that characterize effective interventions with juvenile offenders: A meta-analytic overview. *Victims and Offenders*, 4, 124–147, www.episcenter.psu.edu/sites/default/files/community/Lipsey_Effective%20interventions%20-%202009.pdf.

²⁸ Ridolfi, Laura, Washburn, Maureen, Guzman, Frankie, (2017). “Youth Prosecuted as Adults in California: Addressing Racial, Ethnic, and Geographic Disparities After the Repeal of Direct File.” Oakland & San Francisco, CA: W. Haywood Burns Institute, Center of Juvenile and Criminal Justice, National Center for Youth Law. http://www.cjcj.org/uploads/cjcj/documents/youth_prosecuted_as_adults_in_california.pdf &

Juvenile Justice in California (2020). Criminal Justice Statistics Center, Sacramento, CA.

²⁹ <https://www.census.gov/quickfacts/CA>

³⁰ Kooy, Elizabeth, (2020). “When Juvenile Court is the Default Starting Place for Youth: A Review of Outcomes Following 2015 Automatic Transfer Changes in Cook County.” Evanston, IL: Juvenile Justice Initiative. <https://jjustice.org/wp-content/uploads/Transfer-Report-2020.pdf>

³¹ 2016 Legislative Session, H.95 (Act 153) passed and was signed into law. <https://legislature.vermont.gov/bill/status/2016/H.95>



Vermont became the first state to raise the age of criminal responsibility to 20 years. The following year, the state allowed most youth up to age 21 who had been statutorily excluded from juvenile court to instead be processed as a youthful offender (including youth up to age 21) in juvenile court.³² In 2019, there were a total of 6 youth (all 18 or 19) prosecuted under the youthful offender statute in Vermont.³³ However, youth up to age 21 who are charged with any of 12 serious offenses remain statutorily excluded from juvenile court in Vermont. More recently, Florida³⁴ & Oregon³⁵ both ended statutory exclusion in their states; while Kentucky³⁶ and Rhode Island³⁷ ended mandatory waivers in juvenile court.

In 2020, both Utah³⁸ and Virginia³⁹ greatly restricted their direct file statutes, joining Washington State⁴⁰ (2018) returning the vast majority of children charged as adults back to juvenile court.

The Worst-Case Scenario

Opponents of ending automatic charging present facts of a particularly shocking crime and say “Do you really think this case belong in juvenile court?” This committee should counter by asking those defenders of the status quo, “if it is so obvious that a particularly shocking crime belongs in adult court isn’t it true that a prosecutor will have no problem winning the waiver hearing?”

The worst-case scenario described by opponents of SB165 would likely be waived to adult court and be adjudicated more quickly under this bill than the current lengthy and time-intensive transfer process. Ending automatic charging limits the time young people who will ultimately have their cases adjudicated in juvenile court or dismissed spend in pre-trial detention and ensure

³² 2019 Legislative Session, S133 (Act 45) passed and was signed into law. <https://trackbill.com/bill/vermont-senate-bill-133-an-act-relating-to-juvenile-jurisdiction/1708195/>

³³ Schatz, K, Vastine, K, Chester, L, Sussman, M, et al, (2019). “Report on Act 201 Implementation Plan Report & Recommendations,” Report to the Vermont Legislature. Burlington, VT. <https://dcf.vermont.gov/sites/dcf/files/DCF/reports/Report-Act201.pdf>

³⁴ 2019 Legislative Session, HB 7125 passed and was signed into law. <https://trackbill.com/bill/florida-house-bill-7125-administration-of-justice/1740423/>

³⁵ 2019 Legislative Session, SB 1008 passed and was signed into law. <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB1008>

³⁶ 2021 Legislative Session, SB 36 passed and was signed into law. <https://apps.legislature.ky.gov/record/21RS/sb36.html>

³⁷ 2018 Legislative Session, H7503 passed and was signed into law. <http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H7503.pdf>

³⁸ 2020 Legislative Session, HB0384 passed and was signed into law. <https://le.utah.gov/~2020/bills/static/HB0384.html>

³⁹ 2020 Legislative Session, HB0384 passed and was signed into law. <https://le.utah.gov/~2020/bills/static/HB0384.html>

⁴⁰ 2018 Legislative Session, SB 6550 passed and was signed into law. <https://app.leg.wa.gov/billsummary?BillNumber=6550&Year=2017&Initiative=false>



that those young people deemed appropriate for rehabilitation start those services as quickly as possible.

Ending automatic charging also guarantees that a juvenile court judge retains full discretion over whether the youth is waived to adult court. Because at the time of arrest, many cases look similar. Take the case of Andrew Zaragoza. Andrew was 16 when he was arrested for killing his mother. Andrew is now 21 years old, but when his public defender Kimberlee Watts first met him he was a terrified 16-year-old child who still bore the scars on his chest where his mother had stabbed him and on scars across his throat when he had tried to kill himself.⁴¹

One day, when he was 16-years-old Andrew's mother came home high and began to molest him – again. When Andrew tried to call for help, his mother stabbed him in the chest. Andrew attempted to protect himself from his mother, struck her with a hammer, and killed her. Andrew was so distraught, he then tried to take his own life.

Despite the mountains of corroborating evidence that Andrew was severely abused by his parents, the law required that he be automatically charged in adult court. Given that he was charged with First Degree murder, Andrew was not transfer eligible. A jury acquitted Andrew of First Degree Murder, but convicted him of Second Degree Murder. Because Andrew was initially charged with first degree murder he was not eligible for transfer to juvenile court even at sentencing.⁴²

Andrew is currently in the Division of Corrections' Patuxent Youth Program and so has no access to internet to be able to directly share his. If Andrew could address the Committee he would tell you that he suffered severe and pervasive physical, emotional, and sexual abuse for years at the hands of his parents. The abuse was not investigated until after Andrew was already charged in adult court. The Child Protection Services (CPS) investigator who visited Andrew in jail after he was automatically charged in adult court was the first time anyone from spoke to him about the abuse without his abusive mother present. A CPS worker had been to the house 2 years prior and again one month before Andrew killed his mother, but no one spoke to him privately. A month before her death Andrew's mother agreed to a safety plan with CPS, but she refused any services. No one did anything to protect him and the abuse continued.

Andrew cried out for help in other ways. Court records show that as a child, he called the police many times for help. Once, Andrew had to barricade himself in a room hiding from his abusive mother. While his father tried to keep his mother out, Andrew called the police for help. The police involuntarily hospitalized his mother, but did not report the abuse to CPS as required by law. In short, despite mandatory reporting laws, agencies, and systems designed to protect children the law did nothing to protect Andrew.

⁴¹ The details of Andrew's abuse and his case are being shared with the his explicit permission.

⁴² Criminal Proceedings Article § 4-202(d).



Despite the mountains of corroborating evidence that Andrew was severely abused by both his parents, the law required that he be automatically charged in adult court. Because he was initially charged with First Degree murder, Andrew was not eligible for transfer to juvenile court even at sentencing. The most rehabilitative option the sentencing Judge had available to her was the Patuxent Youth Program (PYP.)

Andrew Zaragoza was a child who the State of Maryland failed to protect from horrific abuse at the hands of his mother. He was raised in a home where every day he had to fight for survival. Andrew absolutely can be rehabilitated, but for the past four years he has been warehoused in DPSCS jails and prisons. Although the Patuxent Youth Program (PYP) purports to be rehabilitative, it has less than 10 clinicians serving over 1000 inmates in multiple programs, lacks any individual therapy, and has no real vocational or educational programming.⁴³ Instead of getting help to prepare to be a productive member of society and undergoing therapy – like he would be doing if he were in a DJS committed program, Andrew is trying very hard not to stagnate, and not to give up hope for a better future.

Andrew is a perfect example of why Maryland must end all automatic charging of children in adult court – even those charged with the most serious offenses.

DJS is already successfully serving many young people like Andrew; more 50% of the youth currently in DJS detention facilities are youth charged as adults pending transfer hearings.⁴⁴ DJS assesses all young people for the particular treatment and rehabilitative services required for the individual child. This assessment is done through an evidence based process and Multidisciplinary Assessment Staffing Team (“MAST”) staffing.⁴⁵ All DJS committed programs provide, at a minimum, (1) comprehensive behavioral health services (integrated mental health and substance abuse treatment, including suicide assessment and prevention, crisis intervention and stabilization, medication evaluation and monitoring, and individual, group, and family therapy); (2) trauma informed care (including specialized individual trauma-focused cognitive behavioral therapy for youth and trauma education for all residential staff, which includes, among other things, specific training in Trauma and Delinquency, Trauma’s Impact on Development, Coping Strategies, and Vicarious Trauma, Organizational Stress, and Self-Care; (3) Substance Abuse Services through a program entitled Seven Challenges; (4) Positive Behavioral Interventions and Supports (“PBIS”), an program for developing pro-social behavior and including a behavior motivation system, utilizing positive reinforcement and modeling, entitled STARR; (5) somatic health services (employing developmentally appropriate routine well care and routine medical monitoring in addition to medical care in times of illness or accident); and (6) educational services (including full time school in accordance with MSDE credit and graduation requirements, remediation where needed, and Special Education services for those students with an IEP.⁴⁶

⁴³ FY20 Patuxent Institutional Annual Report. <https://dpscs.maryland.gov/rehabservs/patx/patx.shtml>.

⁴⁴ DJS Data Resource Guide FY2021.

⁴⁵ <https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx> at page 153.

⁴⁶ <https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx> at page 154-56.



We know that rehabilitation works.⁴⁷ Children initially charged in adult court, but served in the juvenile system by DJS have only a 17% re-incarceration rate after 36 months (compared to 40% re-incarceration rate for DPSCS⁴⁸) because the juvenile system is designed to address the developmental, somatic, and mental health needs of children and young adults.

This bill will not result in a huge change in the number of children sentenced to adult prison, but it will result in thousands less vulnerable children being warehoused in cells for months on end while their cases wind their way through the courts only to be ultimately transferred or dismissed.

SB165 is a data-driven policy that will increase public safety and reduce recidivism of youth offenders. It is a public safety bill and we urge this committee to vote favorably.

⁴⁷ See note 27. Overall, Lipsey's meta-analysis indicated that juvenile treatment programs were effective for reducing juvenile recidivism, especially when they provided larger amounts of meaningful contact (treatment integrity) and were longer in duration (more dosage), were designed by a researcher or had research as an influential component of the treatment setting, and offered behavioral, skill-oriented, and multimodal treatment.

⁴⁸ <https://www.dpccs.state.md.us/publicinfo/publications/annuals.shtml>

MAYSB - SB 165 FAV - Juveniles Court Juisdiction.p

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"Being here for Maryland's Children, Youth, and Families"

Testimony submitted to Senate Judicial Proceedings

January 27, 2021

**SB 165 - Juveniles Court - Jurisdiction
Support**

The Maryland Association of Youth Service Bureaus, which represents a network of Bureaus throughout the State of Maryland, Supports SB165 Juveniles Courts - Jurisdiction. Youth Service Bureaus provide prevention, intervention and treatment services to youth and their families. SB165 will alter the Juvenile Courts' jurisdiction over youth who have been charged with committing specific offenses. The Juvenile Court will have jurisdiction over youth 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment and youth 16 years of aged alleged to have committed specific crimes. These youth would begin in the Juvenile Court System, which MAYSB believes is in line with the State's efforts to have a juvenile justice system that is developmentally informed and urges a favorable finding.

A developmentally informed approach to juvenile justice recognizes the need to hold youth accountable for their actions while also offering them the resources and opportunities to be rehabilitated. It recognizes that youth are still maturing and that their brains are not fully developed until after age 24. Youth who commit violent crimes should be held accountable for their actions and the harm they have done to others. They should not, however, be left without the possibility of rehabilitation. According to a 2016 report produced by Maryland's Department of Juvenile Services looking at six years of data, 60% of youth automatically sent to the adult justice system either had their case dismissed or sent back to the juvenile system. These youth were needlessly exposed to an adult criminal system and endured more court time as their cases were either dismissed or moved to the juvenile system. Allowing youth to be under the jurisdiction of the juvenile court system will decrease the exposure of youth to the adult system, a system whose mission is punishment rather than rehabilitation.

Maryland should be a leader in advocating that all children are capable of, and worthy of, redemption and deserve an opportunity for a second chance, regardless of their race, socio-economic background, or the crime of which they have been accused.

(over)

A developmentally informed system is also fair and works to ensure that all youth receive fair and equal treatment. This bill will assist the State of Maryland in addressing racial and ethnic disparities (RED) found in the juvenile justice system. Data in Maryland shows that youth of color are disproportionately impacted at each decision point in the juvenile justice system. The Data Resource Guide 2020 for the Department of Juvenile Services indicates that of the total complaints received by DJS in 2021 (7129) 67% were youth of color. For Youth whose cases were formalized, (2941) 58% were youth of color. When one looks at youth transferred to the adult court (214 youth), 67% (143 youth) were youth of color. This bill will help increase the opportunity for fair treatment for youth of color as they move through the court system.

MAYSB believes that following a developmental informed approach to juvenile justice is important and allows youth the opportunity to be held accountable for their actions while also offering them the resources to develop and be rehabilitated. At its core this model recognizes that the thinking and maturity of juveniles is not equal to that of adults and works to offer them opportunities to change and learn from their mistakes.

We respectfully ask you to Support this bill.

Respectfully Submitted:

Liz Park, PhD
MAYSB Chair
lpark@greenbeltmd.gov

2022 End Auto Charging SB165_MBT_Jan27 Written Tes

Uploaded by: Marlon Tilghman

Position: FAV

Submitted by: Rev. Dr. Marlon B. Tilghman (a Harford County, MD Pastor, U.S. Marine Corps SSgt, retired commission '92), 1118 Marksworth Road, Gwynn Oak, Maryland 21207.

Senate Bill 165
Juvenile Court – Jurisdiction
Ending Automatic Charging of Youth as Adults
Support

Dear William Smith and Honorable Senate Judiciary Proceeding Committee,

BRIDGE Maryland, Inc. is a non-profit faith-based organization that uses intentional relationship building, organizing and intensive leadership development to strengthen congregations and faith leaders to demonstrate and advance justice in the world. One of our primary functions is raising the consciousness of Maryland on the great work you all have done and as your partners will do in the future. That is why BRIDGE Maryland supports Senate Bill 165.

This bill address one significant fact. Children and youth are not adults, and we should have the empathy to know and treat them differently. Maryland sends more young people per capita to adult court based on offense type than any other state except for Alabama.¹ **Is that the message we want our children to hear about the people who are supposed to care and protect them?** Why does Maryland rank worst in the country for protecting the rights of young people in the legal system.² A major reason is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses – putting us out of order with other states and international human rights law. Last year, Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined. A staggering 93% of those were youth of color. **I must believe we're better than this—we can be better than this.**

In Maryland, children as young as 14 are automatically charged in adult court thus increasing the likelihood, they will re-offend sooner with a more violent crime than children who are charged in juvenile court. This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried in adult court reflect and reinforce the racial inequities that characterize the justice system in the United States.

Here are some FACTS that should inspire you to empathize with these children as you once were. Remember, you serve on this committee to wear a blindfold so that age-appropriate justice is your guide.

¹ <http://dls.maryland.gov/pubs/prod/NoPbITabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

² <https://humanrightsforkids.org/national-state-ratings-report/>

The Justice System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the Maryland court system.³ Rampant racial inequities are evident in the way youth of color are disciplined in school, policed and arrested⁴, detained, sentenced, and incarcerated.⁵ These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than white youth charged with similar offenses.⁶

Youth of color are more likely to be tried as adults than white youth, even when being charged with similar crimes. In Maryland between 2017-2019, 93% of juveniles tried as adults were youth of color; 80% were Black.⁷

“Tough on Crime” Laws Criminalize Youth and Make Us Less Safe

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

We can and must treat our children better. Maryland should join the 26 other states who have passed laws to **treat kids like kids and end automatic charging**. BRIDGE Maryland urges this committee to issue a favorable report on SB 165.

Sincerely,

Marlon Tilghman

Rev. Dr. Marlon B. Tilghman,
Co-Chair of BRIDGE Maryland, Inc., Criminal Justice Workgroup

³ Hagan J, Shedd C, Payne MR. Race, ethnicity, and youth perceptions of criminal injustice. *American Sociological Review*. 2005;70(3):381-407. See also, *DJS Data Resource Guide FY2021*, 241.

https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

⁴ Monroe CR. Why Are “Bad Boys” always Black?: Causes of Disproportionality in School Discipline and Recommendations for Change. *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*. 2005;79(1):45-50. doi:10.3200/TCHS.79.1.45-50

⁵ <https://goccp.maryland.gov/wp-content/uploads/juvenile-dmc-201101.pdf>

⁶ Soler M. Health issues for adolescents in the justice system. *Journal of Adolescent Health*. 2002;31(6):321–333.

⁷ Vera Institute, *Preliminary Findings: Youth Charged as Adults in Maryland*, Dec. 10, 2020.

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>.

SB 165_MS_fav.pdf

Uploaded by: Maya Szilak

Position: FAV



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Testimony from:

Maya Szilak, Resident Fellow, Criminal Justice and Civil Liberties, R Street Institute
Sarah Wall, Government Affairs Region Manager, Northeast Region, R Street Institute

In SUPPORT of SB 165

January 27, 2022

Senate Judicial Proceedings Committee

Chairman Smith, Vice Chairman Waldstreicher and Honorable Members of the Committee,

R Street Institute (RSI) is a nonprofit, nonpartisan public policy research organization focused on advancing limited government and effective free-market policy at the state and federal level. As part of this mission, the Criminal Justice and Civil Liberties team at RSI evaluates policies related to the justice system, and proposes changes to law that would improve outcomes for criminal justice stakeholders and the public. Because SB 165 would align Maryland with research that demonstrates better outcomes for youth and enhanced public safety, RSI encourages its **favorable report**.

SB 165 would end the direct-file provisions under Maryland law that automatically place an inordinate number of youth in the adult criminal court system. From the time of the initial charging decision, youth under 18 years old, and as young as 14, are automatically subject to adult criminal prosecution if they are charged with any one of 33 offenses.¹ Although youth have an opportunity to argue in “waiver hearings” that their cases should transfer back to the juvenile court, the burden of proof is on the youth to show they can be rehabilitated in the Department of Juvenile Services.²

Senate Bill 165 would change the current law by establishing that all children under the age of 18 begin their cases in the juvenile courts. In doing so, SB 165 would not preclude prosecuting youth as adults, as prosecutors still would retain the right to seek a waiver to the adult system, considering the nature of the offense, the youth’s maturity and capacity for rehabilitation, and the need to protect the public. Hence, if SB 165 was enacted, it would merely shift the burden of proof to the prosecution to show that the juvenile system is inadequate to treat a youth and protect the public.

Placing the burden of proof on the prosecutor, rather than the defendant, would align with the right to due process.³ It also would bring Maryland in line with other states, such as Kansas, that presume that young people should be given the benefit of having their cases heard in the juvenile courts and a meaningful opportunity for rehabilitation, unless proven otherwise.⁴ As it stands, Maryland is an outlier



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among the states in its adult-charging practices, ranking second only to Alabama in the per capita number of youth that it automatically sends to adult criminal court.⁵

Rather than automatically shunting children into the adult system, SB 165 would ensure every option for rehabilitation in the juvenile system is used before moving to the adult criminal courts. This would be a boon to youth rehabilitation and public safety, and prevent the needless waste of resources.

Unlike the adult criminal justice system, Maryland's juvenile justice system preserves family connections that protect against future criminality and provides youth with the rehabilitative services needed to reenter society as productive adults.⁶ While juvenile court records are sealed upon a youth reaching the age of 21, youth convicted as adults face the life-long stigma and negative collateral consequences of a criminal conviction, which foreclose critical opportunities for education, housing and employment. Keeping youth in the juvenile system helps to improve public safety and reduce recidivism by providing youth with rehabilitative services, preventing youth from learning criminal behaviors through contact with adult inmates, and removing negative collateral consequences that flow from adult criminal convictions and prevent successful reentry.⁷

More than a decade ago, the U.S. Department of Justice found, "[r]esearch provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism."⁸ The Centers for Disease Control and Prevention likewise found, "[t]ransfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth," and therefore recommended "[a]gainst laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence."⁹ Maryland's antiquated system of automatically charging youth as adults demands reform because it is wholly out of step with prevailing research and best practices, and ultimately undermines public safety.

Moreover, Maryland's automatic adult charging system is grossly wasteful and inefficient. The majority of youth automatically charged as adults end up transferred back to the juvenile court system.¹⁰ In total, more than 80 percent of youth charged as adults are transferred back to the juvenile courts, found not guilty or sentenced to time served—obviating the utility and validity of operating under a presumption that youth charged with certain offenses automatically should be prosecuted in adult criminal courts.¹¹ Rather than wasting the time and resources of prosecutors in pointless waiver hearings, SB 165 would allow prosecutors instead to focus on prosecuting and securing adult criminal convictions in cases where young offenders present a true threat to public safety and security.

In recent years, the Maryland General Assembly has received well-deserved recognition for its holistic analysis and corrective action, such as the 2017 Justice Reinvestment Act, and has worked to undo the impact of decades-old ineffective policies that over-criminalized individuals and harmed public safety.¹² The continued practice of automatically charging youth as adults contradicts the legislature's otherwise-positive efforts toward implementing reforms that lead to better outcomes for youth and the public. It is long past time for policymakers to change Maryland law on automatic adult charging. For these reasons,



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R Street Institute thanks the members of this Committee for their consideration and urges a favorable report on SB 165.

Respectfully submitted,

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Sarah Wall
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R Street Institute
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¹ Hannah Gaskill, "Reform Council Recommends Ending Policy of Automatically Charging Some Youth as Adults," *Maryland Matters*, Sept. 9, 2021. <https://www.marylandmatters.org/2021/09/09/reform-council-recommends-ending-policy-of-automatically-charging-some-youth-as-adults/#:~:text=In%20Maryland%2C%20kids%20age%2014,to%20commit%20first%2Ddegree%20murder.>

² Office of Juvenile Justice and Delinquency Prevention, "Maryland's Transfer Laws," U.S. Department of Justice, last accessed Jan. 25, 2022. <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/tryingjuvasadult/states/md.html>.

³ Legal Information Institute, "Due Process," Cornell Law School, last accessed Jan. 25, 2022. https://www.law.cornell.edu/wex/due_process.

⁴ *Juvenile Crime and Consequences in Kansas*. Kansas Legal Services, Inc., September 2011. <https://www.kansaslegalservices.org/sites/kansaslegalservices.org/files/Collateral%20Consequences%20Booklet%20-%20Final.pdf>.

⁵ Hannah Gaskill, "Amid Juvenile Justice Reform Push, Commission Examines Maryland's High Rate of Trying Young People as Adults," *Maryland Matters*, July 21, 2021. <https://www.marylandmatters.org/2021/07/21/amid-juvenile-justice-reform-push-commission-examines-marylands-high-rate-of-trying-young-people-as-adults>.

⁶ Victor Cullen Center, Maryland Department of Juvenile Services, last accessed Jan. 25, 2022. <https://djs.maryland.gov/Pages/facilities/Victor-Cullen-Center.aspx>.

⁷ Shari Miller-Johnson and Joel Rosch, "Juvenile or Adult Court: Research on Future Offending," Center for Child and Family Policy, Duke University, last accessed Jan. 25, 2022. https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_ncfis03c04.pdf; David Myers, "The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias," University of New Haven, 2003. <https://digitalcommons.newhaven.edu/cgi/viewcontent.cgi?article=1032&context=criminaljustice-facpubs#:~:text=A%20comparison%20of%20the%20waived,those%20retained%20in%20juvenile%20court>.

⁸ Richard E. Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" U.S. Department of Justice, Office of Juvenile Justice And Delinquency Prevention, *Juvenile Justice Bulletin*, June 2010. <https://www.ojp.gov/pdffiles1/ojjdp/220595.pdf>.

⁹ Robert Hahn, et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. A Report on Recommendations of the Task Force on Community Preventive Services,"



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Centers for Disease Control and Prevention, Nov. 30, 2007.

<https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

¹⁰ Department of Juvenile Justices, *Final Report*, Maryland Juvenile Justice Reform Council, January 2021.

<https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024900/024904/20210048e.pdf>.

¹¹ Amanda Engel, "In Focus: A meeting to end 'direct file' in Maryland, and improve public safety," WMAR News Baltimore, July 20, 2021. <https://www.wmar2news.com/infocus/in-focus-a-meeting-to-end-direct-file-in-maryland-and-improve-public-safety>.

¹² "Governor Larry Hogan Announces Implementation of Justice Reinvestment Act," Governor's Office of Crime Prevention, Youth, and Victim Services, Oct. 3, 2017. <http://goccp.maryland.gov/governor-larry-hogan-announces-implementation-justice-reinvestment-act>.

Goemann, NJJN Testimony in support of MD SB 165.pd

Uploaded by: Melissa Goemann

Position: FAV

NATIONAL JUVENILE JUSTICE NETWORK

Melissa Coretz Goemann
National Juvenile Justice Network
January 27, 2022
FAVORABLE

Senate Bill 165 Juvenile Court – Jurisdiction

Chairman Smith and Members of the Senate Judicial Proceedings Committee:

My name is Melissa Coretz Goemann and I am submitting this testimony in support of SB 165 on behalf of the National Juvenile Justice Network (NJJN). I am the Senior Policy Counsel for NJJN and am also a resident of Silver Spring, Maryland. NJJN leads a membership community of [60 state-based organizations and numerous individuals across 42 states and D.C.](#), including Maryland. We all seek to shrink our youth justice systems and transform the remainder into systems that treat youth and families with dignity and humanity.

By ending the automatic charging of youth as adults, this bill will ensure that the determination of whether to charge a young person as an adult is given the serious consideration by a judge that this significant, life-altering decision requires. The negative impacts of treating youth as adults are substantial and often life-long, affecting individual youth, their families, and communities.¹ Youth held in adult facilities are extremely vulnerable to physical and sexual assault and have much higher rates of suicide than youth in juvenile facilities.² The adult system also lacks general educational programming, special education services, and appropriate physical and mental health care for youth.³ Youth with adult criminal records will likely have difficulty finding employment and may suffer from other collateral consequences such as restrictions on voting rights, access to higher education, joining the military, or living in public housing. These failings have a direct impact on public safety, as research shows that adult system processing and incarceration increases recidivism among teens.⁴

Adult sanctions for youth also do not account for fundamental differences in culpability. Studies of adolescent brain development have revealed that the part of a young person's brain related to judgment

¹ See, e.g., Campaign for Youth Justice, "The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform" (March 2007), https://www.njjn.org/uploads/digital-library/CFYJNR_ConsequencesMinor.pdf.

² Campaign for Youth Justice, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America" (November 2007): 4, 11-13, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1697706; James Austin, et al., "Juveniles in Adult Prisons and Jails: A National Assessment" (Bureau of Justice Assistance, October 2000): 7-8, <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.

³ Campaign for Youth Justice, "Jailing Juveniles," 4-7.

⁴ "Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services" (Centers for Disease Control and Prevention, April 2007): 6-8, www.cdc.gov/mmwr/pdf/rr/rr5609.pdf.

and impulse control is generally not fully developed until the early to mid-twenties.⁵ As part of normal development, youth are more likely to take risks, act impulsively, and are highly susceptible to the negative influences of peers. Though these age-related factors may contribute to youthful mistakes, youth are uniquely capable of change. In fact, several recent U.S. Supreme Court decisions have cited these differences between youth and adults as necessary considerations when it comes to imposing extreme adult sentences and evaluating police custody.⁶ These decisions rely on both scientific evidence related to the psychology and development of children and youth, as well as a more general understanding that children possess a broad capacity for rehabilitation and positive change.

Finally, being tried as an adult is a sanction that falls disproportionately on the shoulders of Black and Brown youth. Approximately 7,800 juveniles were automatically charged as adults in Maryland from 2013-2020, and about 80 percent of them were Black.⁷ In Montgomery County, where I live, the rate is even higher — 95 percent of youth charged in adult court in Fiscal Year 2021 were Black or Hispanic.⁸ Such blatant disparities undermine the principle of fairness, highlighting the immediate need for serious consideration by a judge before a young person is transferred into the adult system.

Nationally, the tide is shifting away from transferring youth to adult court. Twenty-six states have made changes to their laws on the automatic transfers of youth into adult court in the past fifteen years. Yet Maryland is one of only nine states that transfer over 200 children to the adult system every year⁹ and only Alabama transfers youth to adult court at a higher rate than Maryland does.¹⁰

We urge Maryland to pass SB 165 ending the automatic charging of youth as adults and instead require that all court proceedings against young people begin in the juvenile court system, as recommended by the Maryland Juvenile Justice Reform Counsel,¹¹ to ensure that the transfer of youth into adult court does not occur without the considered review of a Maryland judge.

Respectfully Submitted,

Melissa Coretz Goemann

⁵ National Juvenile Justice Network (NJJN), “Using Adolescent Brain Research to Inform Policy” (Washington, DC: NJJN, September 2012); 1, https://www.njjn.org/uploads/digital-library/Brain-Development-Policy-Paper_Updated_FINAL-9-27-12.pdf.

⁶ See, e.g., *Roper v. Simmons*, 543 U.S. 551 (2005) (eliminates the death penalty for crimes committed while youth are under age 18); *Graham v. Florida*, 560 U.S. 48 (2010) (bans life without parole sentences for youth under age 18 convicted of non-homicide offenses); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (holds that age is relevant factor to consider when determining whether a child is in police custody for Miranda purposes); and *Miller v. Alabama* and *Jackson v. Hobbs*, 567 U.S. 460 (2012) (ban mandatory life without parole sentences for youth 17 and under).

⁷ Brian White, “Supporters of Juvenile Justice Reform Hopeful in Maryland,” *The Baltimore Sun*, Dec. 21, 2021, <https://www.baltimoresun.com/politics/bs-md-pol-maryland-juvenile-justice-reform-20211222-zxc3wrnn6vef7iwluuyjur5lpy-story.html>.

⁸ Maryland Department of Juvenile Services (DJS), *Data Resource Guide Fiscal Year 2021* (DJS, December 2021): 131, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

⁹ White, “Supporters of Juvenile Justice Reform.”

¹⁰ Maryland Department of Legislative Services (DLS), “The Juvenile Justice Reform Council Supplemental Report” (Annapolis, MD: October 2021): 40, [Juvenile Justice Reform Council Supplemental Report \(maryland.gov\)](https://www.dls.maryland.gov/Portals/0/JJR_Council_Supplemental_Report.pdf).

¹¹ DLS, Supplemental Report, 12.

2022 SB 165 End Automatic Charging testimony .pdf

Uploaded by: Natalie Spicyn

Position: FAV

Natalie Spicyn MD, MHS, FAAP
District 41

January 25, 2022

TESTIMONY IN SUPPORT OF SB 165
Juvenile Court - Jurisdiction
Ending Automatic Charging of Youth As Adults

TO: Hon. Chairman Smith and the members of the Judicial Proceedings Committee

FROM: Natalie Spicyn MD, MHS, FAAP

As a board-certified pediatrician and adult internal medicine specialist at a community health center in the Park Heights neighborhood of Baltimore, I care for children, adolescents and adults across the life span, including many families adversely impacted by the criminal justice system in Maryland. I am writing in strong support of SB 165, which would curb Maryland's developmentally-inappropriate practice of automatically prosecuting children in adult court for various offense types.

Regardless of offense type, a child is a child; this is the very underpinning of the existence of the juvenile court system, which is undermined when we allow our children to be tried in adult court as a matter of default in many cases. This practice is not concordant with our understanding of the developing adolescent brain.

It is well-known that the area of the brain that is responsible for higher order cognitive processing, the prefrontal cortex, continues to develop well into the 3rd decade of life. Unfortunately, not only is the practice of automatically charging youth as adults developmentally-inappropriate, but it is even detrimental to their health; the CDC has found that the "adult criminal justice system is associated with subsequent violence among juvenile participants when compared... [to] juveniles retained in the juvenile justice system." These youth also have higher rates of recidivism.

Sadly, the impact of this practice is disproportionately shouldered by the Black and brown children for whom I care in my medical practice: in Maryland between 2017 and 2019, 93% of kids tried as adults were youth of color, and 80% were Black. At a time when we in the medical community are evaluating the "social determinants of health" including the impact of structural racism on health outcomes, I was aghast to learn that Maryland sends more young people per capita to adult court, based on offense type, *than any state other than Alabama*.

Maryland can and must do better for our youth. Alongside my pediatrician colleagues within the Maryland Chapter of the American Academy of Pediatrics, I respectfully submit this individual testimony requesting a favorable report on SB 165, an urgently important bill for Maryland's children.

JJMU SUPPORT - SB165 Juvenile Court Jurisdiction J

Uploaded by: Nick Moroney

Position: FAV



STATE OF MARYLAND
JUVENILE JUSTICE MONITORING UNIT

TESTIMONY IN SUPPORT OF SB 165: JUVENILE COURT - JURISDICTION

Senate Judicial Proceedings Committee
January 27, 2022

Submitted by Nick Moroney, director, Juvenile Justice Monitoring Unit (JJMU)

The Juvenile Justice Monitoring Unit (JJMU) supports SB 165. The JJMU is an independent state agency in the Attorney General's office. We work to prevent abuse and ensure appropriate services in the deep end of Maryland's juvenile justice system. Our reports are at: <https://www.marylandattorneygeneral.gov/pages/jjm/default.aspx>

The automatic prosecution of children and young people as if they were adults is a relatively recent practice that takes away the balance afforded by court discretion to weigh allegations, charges and circumstances on a case-by-case basis when deciding whether to subject youth to the adult criminal justice system. The vast majority of youth who are automatically charged as if they were adults do not end up in the adult criminal justice system but, in the meantime, they may have been needlessly subjected to the risks associated with confinement through the adult criminal justice system – a system that has ultimately been found to be inappropriate for them.

The adult prison system entails high risk of abuse as well as self-harm for young people left among adult criminal actors and also offers little to nothing by way of individualized services and support for young people in that system - that is in stark contrast to the juvenile system. The juvenile system centers on service provision and the Department of Juvenile Services offers individualized services and supports for youth, regardless of the level of charges pressed against them.

If the current bill becomes law, it will not mean the end of prosecuting children as adults in Maryland, but it will mean the right of a court to examine charges and make decisions based on individual facts and circumstances is reinstated. Rather than having an automatic decision based on a type of charge, prosecutors will need to offer arguments to support turning a young person over to the adult criminal justice system.

For these reasons, the JJMU supports SB 165 and respectfully urges the committee to give the bill a favorable report.

NikitaMason_SB165_2022.pdf

Uploaded by: Nikita Mason

Position: FAV

January 27, 2022

POSITION: SUPPORT SB165 – Juvenile Court - Jurisdiction

Presented to the Honorable Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and Members of the Judicial Proceedings Committee

Thank you, Chairman Smith and members of the Judicial Proceedings Committee. My name is Nikita Mason, and I am a Baltimore City resident, a member of the People's Commission to Decriminalize Maryland, a social justice warrior, youth engagement coach, motivational speaker, social entrepreneur, and best of all, a mother!

Unlike many of those testifying today, I have directly experienced the harms and trauma of Maryland's current laws requiring prosecution of youth as adults, both as a young person in the criminal legal system, and through the experiences of my family members. I strongly support SB165, and I urge the Committee to issue a favorable report on this bill. Investing in the lives of youth of color who come into contact with the legal system makes sense morally and economically. Black and brown youth should be met with the same compassion and empathy as their counterparts when being tried for similar offenses, but that is not the case, as we all know.

Experiences mold you and make you who you are. As a young person who has been in the mindset and psyche of an incarcerated youth; I can tell you 1st hand how debilitating, mental damaging, and trauma infused the whole ordeal is. It's taking Years of trauma-informed healing and care to maneuver past all the hurt, feelings of abandonment, and inhumane treatment you're met with when you're not lucky enough to be diverted out of the legal system. It's a constant conscious effort to push yourself in a mindset of growth and healing. Only the strong survive, and many young people end up succumbing to the constant reminder of how unwanted, unsafe, and not worthy of protection they are in the eyes of the Justice System. Passing bill SB165, is a step in the direction that supports better outcomes for young people involved in the system and their families

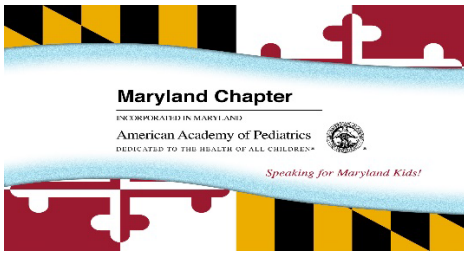
All due to the laws, codes, and bills that perpetuate hateful, inequitable, unjust and overall demeaning toward the youth who have the unfortunate experience and make it out of the situation in one piece. I have teenage family members who due to one questionable adolescent decision or choice they made, now there's a traumatic scare that makes life overall hard to handle. The legal system eats up adults of color and many of them never make it out of the vicious cycle of the justice system to tell their story!

SB165 would take a long overdue step in ending a harmful, counterproductive, and costly practice and would promote a more equitable and effective approach to justice. For these reasons, I strongly support SB165 and urge the Committee to issue a favorable report.

SB0165_FAV_MDAAP_Juvenile Court - Jurisdiction.pdf

Uploaded by: Pam Kasemeyer

Position: FAV



TO: The Honorable William C. Smith, Jr., Chair
Members, Senate Judicial Proceedings Committee
The Honorable Jill P. Carter

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine K. Krone

DATE: January 27, 2022

RE: **SUPPORT** – Senate Bill 165 – *Juvenile Court – Jurisdiction*

The Maryland Chapter of the American Academy of Pediatrics (MDAAP) is a statewide association representing more than 1,100 pediatricians and allied pediatric and adolescent healthcare practitioners in the State and is a strong and established advocate promoting the health and safety of all the children we serve. On behalf of MDAAP, we submit this letter of **support** for Senate Bill 165.

Senate Bill 165 proposes to reform Maryland's law as it relates to the jurisdiction of the juvenile court. While the Juvenile Court generally handles cases involving youth who are under the age of 18, there are multiple ways a young person under the age of 18 may be subjected to initial jurisdiction in the adult criminal court. Currently, Maryland law requires young people who are 14 and older and charged with a crime that carries a sentence of life imprisonment if committed by an adult, to be charged directly in the adult court. In addition, young people who are 16 and older and charged with one of 33 crimes are also required to be automatically charged as an adult. In both instances, young people directly charged in the adult criminal justice system are tried and sentenced in that system unless their case is transferred back to the juvenile justice system.

Years of research on brain development has demonstrated that the frontal lobes, which are the seat of reasoned judgment and higher order cognitive decision making, develop late and continue to develop in late adolescence into early adulthood, rendering the adolescent brain consequentially distinct from the adult brain. Charging juveniles in adult court fails to recognize that they are physiologically disadvantaged to adjust their behavior to the mandate of the law in comparison to adults. The juvenile court system, given its established responsibility to promote the best interests of children while helping them to adjust their behavior, is better suited to adjudicate youth cases than adult criminal courts. Evidence shows that youth and public safety outcomes suffer when children are charged in the adult courts.

Passage of Senate Bill 165 will ensure that all cases involving juveniles will be required to begin in juvenile court. While some youth's cases may ultimately be moved to adult court, the burden will fall on the State to establish why juvenile adjudication would be inappropriate. A favorable report is requested.

For more information call:

Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine K. Krone
410-244-7000

SB165-FAV-Evan Serpick, JUFJ.pdf

Uploaded by: Rianna Lloyd

Position: FAV

January 27, 2022

Evan Serpick
Baltimore, MD 21209



THINK JEWISHLY. ACT LOCALLY.

TESTIMONY ON SBI65/HB294 - POSITION: FAVORABLE

Juvenile Court – Jurisdiction

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

FROM: Evan Serpick, on behalf of Jews United for Justice (JUF)

My name is Evan Serpick. I am a resident of District 41 in Baltimore City. **I am submitting this testimony on behalf of Jews United for Justice in support of SBI65/HB294, Juvenile Court - Jurisdiction.** JUFJ organizes 6,000 Jews and allies from across Maryland in support of local social, racial, and economic justice campaigns.

The Jewish tradition places an enormous emphasis on the protection of children. In Jewish text, children are viewed as gifts from God to be cherished and guided, even and especially when they are struggling or in distress. A traditional story tells of a scholar so deep in his religious pursuits that he doesn't hear his child cry out. The scholar's father - an even more eminent scholar - attends to the child and scolds his son: "No matter how lofty your involvements, you must never fail to hear the cry of a child."

SBI65 would end the practice of automatically referring certain juvenile cases to adult court and would leave that decision in the hands of judges on a case-by-case basis. The evidence is clear: sending children to courts designed for adults is harmful for children, detrimental to public safety, and grossly inefficient. Children belong in juvenile courts, which have smaller caseloads, greater access to rehabilitation, and closer collaboration with families and schools. If this bill passes, children might still end up in adult courts, but only after a juvenile court judge listens to counsel and expert witnesses and evaluates each youth and each charge.

Multiple studies show that treating youth as adults decreases public safety by increasing recidivism and future criminal behavior. According to a CDC study, the "adult criminal justice system is associated with subsequent violence among juvenile participants when compared with violence among juveniles retained in the juvenile justice system."¹

¹ "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," MMWR, CDC. <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

While juvenile cases tie up adult courts and cause needless additional trauma, only 10% of children automatically charged as adults actually spend time in adult prison.² The vast majority of juvenile cases that get to adult court are either dismissed as nolle pros or sentenced to time served.

However, police often manipulate the existing laws by charging children with offenses, like first-degree assault, that are automatically transferred to adult courts to get them to plead to lesser offenses. As a result, many children who get into fights make deals to avoid the adult courts and end up with criminal records that negatively affect their job prospects, family lives, and housing options for years to come. The practice also disproportionately affects African Americans, since eight out of ten children automatically charged as adults in Maryland are Black.³ This bill makes sure that a judge, rather than police, decides whether a child goes to adult court.

In 2020, Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined - those states have 10 times Maryland's population. In fact, Maryland sends more young people to adult court than any other state except for Alabama.⁴

All children are children and we must treat them as such. **On behalf of Jews United for Justice, I respectfully urge a favorable report on SBI 65 to right this wrong and move us toward a more just Maryland.**

² Witte, Brian. "Supporters of juvenile justice reform hopeful in Maryland," Baltimore Sun. <https://www.baltimoresun.com/politics/bs-md-pol-maryland-juvenile-justice-reform-20211222-zxc3wrnn6vef7iwluujiur5lpy-story.html>

³ Ibid.

⁴ "Kids Sent to Adult Court," Department of Legislative Services, General Assembly of Maryland. <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Kids-Sent-to-Adult-Court.pdf>

JLC Written Testimony re SB165.pdf

Uploaded by: Riya Shah

Position: FAV

Senate Bill 165
Juvenile Court – Jurisdiction
Ending Automatic Charging of Youth as Adults
January 27, 2022
Support

Dear Chairman Smith and Honorable Members of the Committee:

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values. Since its founding, Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

Juvenile Law Center supports Senate Bill 165. Maryland sends more young people per capita to adult court based on offense type than any other state except for Alabama.¹ That is why Maryland ranks worst in the country for protecting the rights of young people in the legal system.² A major reason is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses – putting us out of step with other states and international human rights law. Last year, Maryland sent more kids to adult court than California, Pennsylvania, Massachusetts, and Arizona combined. A staggering 93% of those were youth of color.

In Maryland, youth as young as 14 can be tried in adult court depending on what charge a police officer decides to levy against them. When young people are automatically charged in adult court, they are more likely to re-offend, sooner, with more violent crime than children who are charged in juvenile court. This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried in adult court reflect and reinforce the racial inequities that characterize the justice system in the United States.

¹ <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

² <https://humanrightsforkids.org/national-state-ratings-report/>

The Justice System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the Maryland court system.³ Rampant racial inequities are evident in the way youth of color are disciplined in school, policed and arrested⁴, detained, sentenced, and incarcerated.⁵ These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than white youth charged with similar offenses.⁶ Youth of color are more likely to be tried as adults than white youth, even when being charged with similar crimes. In Maryland between 2017-2019, 93% of juveniles tried as adults were youth of color; 80% were Black.⁷

“Tough on Crime” Laws Criminalize Youth and Make Us Less Safe

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.

We can and must treat our children better. Maryland should join the 26 other states who have passed laws to **treat kids like kids and end automatic charging**. Juvenile Law Center urges this committee to issue a favorable report on SB 165.

³ Hagan J, Shedd C, Payne MR. Race, ethnicity, and youth perceptions of criminal injustice. *American Sociological Review*. 2005;70(3):381-407. See also, DJS Data Resource Guide FY2021, 241.

https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

⁴ Monroe CR. Why Are “Bad Boys” always Black?: Causes of Disproportionality in School Discipline and Recommendations for Change. *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*. 2005;79(1):45-50. doi:10.3200/TCHS.79.1.45-50

⁵ <https://goccp.maryland.gov/wp-content/uploads/juvenile-dmc-201101.pdf>

⁶ Soler M. Health issues for adolescents in the justice system. *Journal of Adolescent Health*. 2002;31(6):321–333.

⁷ Vera Institute, Preliminary Findings: Youth Charged as Adults in Maryland, Dec. 10, 2020.

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>.

SB165 Senate Bill 165 - Juvenile Court – Jurisdic

Uploaded by: Sarah Miicke

Position: FAV

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Bolton Street Synagogue
Chevra Ahavas Chesed, Inc.
Chevrei Tzedek Congregation
Chizuk Amuno Congregation
Congregation Beit Tikvah
Congregation Beth Shalom of
Carroll County
Congregation Tiferes Yisroel
Federation of Jewish Women's
Organizations of Maryland
Hadassah
Har Sinai - Ohel Shalom Congregation
J Street
Jewish Federation of Howard County
Jewish Labor Committee
Jewish War Veterans
Jewish War Veterans, Ladies Auxiliary
Jewish Women International
Jews For Judaism
Moses Montefiore Anshe Emunah
Hebrew Congregation
National Council of Jewish Women
Ner Tamid Congregation
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Religious Zionists of America
Shaarei Tfiloh Congregation
Shomrei Emunah Congregation
Simon E. Sobeloff Jewish Law Society
Suburban Orthodox Congregation
Temple Beth Shalom
Temple Isaiah
Zionist Organization of America
Baltimore District



Written Testimony

Senate Bill 165 - Juvenile Court – Jurisdiction

Judicial Proceedings Committee

January 27, 2022

SUPPORT

Background: Senate Bill 165 (SB165), if enacted, would stop the automatic charging of youth in adult court. Currently in Maryland, children as young as 14 can be automatically charged as adults for certain criminal charges. Maryland sends more youth to adult court than any other state besides Alabama. This bill does not preclude children to be tried as adults, it only precludes them from automatically beginning their legal process in adult court for certain criminal charges.

Written Comments: Last year Maryland sent more children to adult court than Pennsylvania, Massachusetts, and Arizona combined. However, less than 13% of children charged as adults end up with a conviction. Starting these cases in juvenile court not only saves the state money and time, but it also creates better outcomes for these children. Children who start in the adult system are more likely to recidivate and engage in more violent crimes. Further, automatic charging shows large racial disparities, where over 80% of children charged as adults are Black and those children are much more likely to receive longer sentences in adult prison than White children.

The Baltimore Jewish Council believes that children are society's most vital futures resources, yet one of its most vulnerable classes. When they are charged with crimes, great care should be taken to ensure that the justice system provides them with fair opportunities for growth and that the mandatory charges of children as adults should be avoided.

For these reasons, the Baltimore Jewish Council urges a favorable report on SB165.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated: Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

SB165Stephanie.JosephFavorable.pdf

Uploaded by: Stephanie Joseph

Position: FAV

January 25, 2022

FAVORABLE, SB165

Chair Will Smith
Judicial Proceedings Committee
Maryland Senate

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

I write in strong support of SB 165 to end the automatic charging of children in Maryland's adult Circuit Court. As an Assistant Public Defender in Montgomery County for almost 20 years, I have represented dozens of children who faced adult charges. In my experience in Rockville, and as the data shows statewide, very few of those cases actually remained in the adult court. These "Transfer" hearings traumatize the children charged, their families and all of those involved in the cases, including the victims. Also, these hearings are a tremendous waste of resources for our Courts and related agencies.

Most importantly, I urge your support for this bill because children should be treated as children. Through personal and parenting experience, many of us have witnessed firsthand what experts from the American Psychiatric Association and numerous other brain science experts have concluded in their various studies – Children brains are not fully developed. Therefore, children lack the decision making ability that their adult counterparts possess.

Finally, I ask you to pass this bill to promote racial justice, fairness and equity. As with so many other aspects of our court system, automatic charging has resulted in the disproportionate charging of children of color. In my courthouse, according to recent data from the Department of Juvenile Services, 95% of children facing adult charges are children of color.

Again, I ask you for your support for this important bill to promote justice in our state. Thank you for your consideration.

Sincerely,

Stephanie L. Joseph
301-887-3575
9909 Forest Grove Dr.,
Silver Spring, MD 20902

testimony.SB165.pdf

Uploaded by: Zainab Chaudry

Position: FAV



January 27, 2022

Honorable Senator William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, MD 21401

Re: Testimony in SUPPORT of SB165 – Juvenile Court – Jurisdiction

Dear Chair William C. Smith, Jr. and Senate Judicial Proceedings Committee Members:

On behalf of the Council on American-Islamic Relations, I thank you for this opportunity to testify in support of Senate Bill **165** sponsored by Senator Jill Carter which aims to stop the automatic charging of children in adult court in the State of Maryland. CAIR is America's largest Muslim civil rights and advocacy organization.

Our state currently ranks among one of the harshest in the country when it comes to prosecuting crimes committed by children and teens under the age of 18. According to the Maryland Youth Justice Coalition, Maryland law currently mandates children as young as 14 to be automatically prosecuted in adult court for nearly three dozen different offenses. We are one of fewer than ten states that send hundreds of children and teens each to adult court every year. In fact, as you might be aware, Maryland sends more young people to adult court based on certain offenses, per capita, than nearly any other state in the country.

Children and teens who are charged as adults are more likely to receive longer sentences than youth who are charged with similar crimes in juvenile court. This disproportionately impacts Black and Brown communities who are more heavily policed. Racial disparities – fueled partly by children being viewed differently by law enforcement officers due to their background, identity or zip code – perpetuate harsher penalties, erode community trust and undermine the goal of rehabilitation.

Over the last fifteen years, 26 states have amended their laws on the automatic transfers of juveniles to adult court after extensive studies and research have revealed the harmful consequences of these policies. We believe it is past time to add Maryland to that growing list.

Key findings of national polls conducted by Data For Progress indicate that a majority of voters across the political spectrum understand that young people have the capacity to change, and want the justice system to rehabilitate young people, rather than imprison them for life.¹

Research on trauma-informed practices shows that trauma and toxic stress indelibly impedes cognitive development in children and teens.² Youth fall within a distinct developmental group that has unique needs and challenges, and there's only a critical window of opportunity for meaningful intervention and positive reinforcement.

CAIR's position is that treating children as adults simply does not improve public safety or help keep our state especially in the long run. Excessively punitive measures interfere with their ability to mature and grow in a healthy, productive way.

We believe it's time for the Maryland General Assembly to take action on meaningful juvenile justice reform, and this bill will help make that happen. Therefore, we respectfully urge a favorable report.

Thank you for your consideration.

Sincerely,

Zainab Chaudry, Pharm.D.
Director, CAIR Office in Maryland
Council on American-Islamic Relations
Email: zchaudry@cair.com
Phone: 410-971-6062

1. <https://www.fairandjustprosecution.org/staging/wp-content/uploads/2020/07/Juvenile-Life-Without-Parole-Polling-Report.pdf>
2. <https://www.fairandjustprosecution.org/staging/wp-content/uploads/2017/09/FJPBrief.TraumaPractices.9.25.pdf>

2022-01-27 SB 165 (Support with Amendments).pdf

Uploaded by: Hannibal Kemerer

Position: FWA

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

January 27, 2022

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Office of the Attorney General

Re: SB0165 – Juvenile Court – Jurisdiction – **Support with Amendments**

The Office of the Attorney General urges the Judicial Proceedings Committee to favorably report with amendments Senate Bill 165. Senator Carter's bill repeals all provisions permitting prosecutors to directly charge juveniles in adult court for dozens of specified crimes. Senate Bill 165 is a good faith attempt to take cognizance of recent Supreme Court jurisprudence establishing that under the U.S. Constitution children are different than adults.¹ These cases rest upon an emerging scientific consensus that children have both diminished culpability and a heightened capacity for rehabilitation.

While we agree that, under current Maryland law, far too many enumerated crimes permit prosecutors to direct file against juveniles in adult court, we do believe that permitting prosecutors to do so in the worst of violent crimes—e.g. murder and rape—should continue to qualify for direct file. Because Department of Juvenile Services intake decisions (i.e. whether to commit or leave a juvenile in community supervision) are not immediately reviewable, it makes sense to permit prosecutors the discretion to remove particularly violent juvenile offenders from the community. Many of these same juveniles will have significant criminal histories warranting their separation from society at large pending trial on only the most violent of crimes.

¹ See e.g. *Tatum v. Arizona*, --- U.S. ---, 137 S.Ct. 11 (2016) (granting, vacating, and remanding in several cases where Arizona courts failed to consider individual circumstances of juveniles sentenced to life without parole); *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (holding that *Miller v. Alabama* holding that Eighth Amendment mandatory life sentences without parole for juvenile offenders is a new substantive constitutional rule that was retroactive on state collateral review); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (mandatory life without parole for juvenile offenders is unconstitutional); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (Eighth Amendment prohibits imposition of life without parole sentence on a juvenile offender who did not commit homicide, and State must give juvenile nonhomicide offender sentenced to life without parole a meaningful opportunity to obtain release); and *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (prohibiting death sentences for those who committed their crimes before age 18).

For the foregoing reasons, the Office of the Attorney General urges the Committee to favorably report SB 165 with amendments continuing to permit direct file against juveniles who commit rape and murder.

cc: Committee Members

Written Testimony for SB 165, Juvenile Court Juris

Uploaded by: Allan Culver

Position: UNF

Bill Number: SB 165
Allan J. Culver, State's Attorney for Carroll County
Opposed

WRITTEN TESTIMONY OF ALLAN J. CULVER,
STATE'S ATTORNEY FOR CARROLL COUNTY,
IN OPPOSITION OF SENATE BILL 165
JUVENILE COURT - JURISDICTION

I write in opposition to Senate Bill 165, Juvenile Court – Jurisdiction, eliminating provisions allowing juveniles to be charged as adults for the most violent offenses such as rape and murder. The primary goal of the juvenile system is to rehabilitate juveniles and to have juveniles remain in the community. The best way to protect our community with juvenile delinquents is to rehabilitate them before they become adult offenders.

However, not every crime committed by a juvenile should be centered around the rehabilitation of the juvenile. The criminal justice system also considers the rights of the victim and the possibility of an individual being a danger to the community. The most violent of criminal offenses committed by juveniles require a more balanced approach.

Although a juvenile may be charged as an adult for a crime of violence, numerous mechanisms are included in the process already to protect juveniles and determine if a juvenile should remain in the adult system:

- Age requirements for initial charging (14 years of age regarding a crime carrying a life sentence, 16 years of age regarding a crime of violence).
- The juvenile may request a transfer hearing to be remanded to the juvenile system after being charged as an adult.
- Juveniles charged as adults have a bail review in front of a judge on the next day of court to determine their eligibility for release.
- Even after conviction, the juvenile may request a review to determine if the case should be remanded to the juvenile system.

The juvenile system is not designed to quickly react to crimes committed by juveniles where the juvenile may be a danger to the community. It's designed with delinquent acts in mind, not violent acts. If Senate Bill 165 becomes law, juveniles who commit crimes and are a danger to the community could remain on the streets and in the community for up to more than 25 days before an arrest warrant is issued in cases where an arrest warrant is required. And even in situations where an arrest warrant is issued for a juvenile, an intake worker can determine whether the juvenile should be detained on a charge of murder or other crimes of violence. The intake worker's determination would be made without input from the victim, the State, the court system or even a defense attorney. In these cases, judges are the appropriate entities to balance the needs of the juvenile versus the safety of the community, but judges would have no voice in this process.

Currently, the Department of Juvenile Services requests that every felony charge be returned to the Department of Juvenile Services to be handled out of court at the intake process thereby eliminating the juvenile court process entirely. If this law were to pass and current DJS policy remain the same, we will have juveniles charged with

murder having their cases resolved at intake. This law will further reduce accountability and public safety.

Over the past several years there has been a movement to close and eliminate juvenile detention facilities. Many of these facilities that were closed were outdated and needed to be closed. However, no juvenile facilities have been developed to replace the ones that were closed. Eliminating adult jurisdiction for crimes of violence will cause violent juvenile offenders, who may be more appropriate for an adult detention facility, to be housed in already overburdened, overcrowded juvenile facilities with other juveniles who will be in danger.

This is an example that highlights the problem that eliminating adult jurisdiction for juvenile crimes of violence will have a ripple affect across the criminal justice and juvenile justice systems. What is the purpose in eliminating adult jurisdiction for juveniles? Is the purpose to not hold juveniles in adult detention facilities if they're not appropriate for such facilities? Is it to limit the length of the incarceration a juvenile charged as an adult can face? Is it to stop juveniles from being charged as adults that will ultimately be more appropriate for the juvenile system? Whatever the problem is with automatic adult offenses there are ways to correct the problem without preventing juveniles who commit murders and rapes from being appropriately charged as adults.

I urge an unfavorable report to Senate Bill 165 as this new law will endanger the community.

SB 165 - UNFAV - OPP.pdf

Uploaded by: Gavin Patashnick

Position: UNF



Maryland State's Attorneys' Association

3300 North Ridge Road, Suite 185

Ellicott City, Maryland 21043

410-203-9881

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Rich Gibson
President

Steven I. Kroll
Coordinator

DATE: **January 27, 2022**

BILL NUMBER: **SB 165**

POSITION: **Unfavorable**

The Maryland State's Attorney's Association (MSAA) opposes SB 165.

I. Introduction

Juvenile jurisdiction involves multiple statutes, rules, and administrative procedures and is more complex and interrelated than commonly understood. The collateral consequences of eliminating automatic adult jurisdiction involve the disruption of many of these facets that will certainly create unintended (or perhaps intended) effects. These effects will compromise certain aspects of public safety and ultimately expose some weaknesses in the juvenile justice system. Below are just a few of the potential issues that arise from such a complete repeal.

A. Arrest Warrants

Obtaining a juvenile arrest warrant is cumbersome for law enforcement. Like most procedures, each jurisdiction has some variances in actual practice, but the essential methodology is governed by statute. Pursuant to Courts and Judicial Proceedings Article § 3-8A-14.1(a), in order for an arrest warrant to be issued against a child, a law enforcement officer must make an application to a Department of Juvenile Services ("DJS") Intake Worker. That worker then has up to 25 days to conduct an inquiry under Courts and Judicial Proceedings Article § 3-8A-10(c) to determine whether "judicial action is in the best interests of the public or the child." If the allegation is a felony, the worker must forward the application to the State's Attorney's Office for the jurisdiction where the alleged delinquent act occurred.¹

If the intake officer approves the filing of a petition, the intake officer "may" file the application for an arrest warrant with the court. A judge may only issue a warrant if the judge finds (based

¹ Courts and Judicial Proceedings Article § 3-8A-10(c)(1)-(4)

on the affidavit filed by a law enforcement officer) that there is probable cause to believe that: (1) the suspect child has committed a delinquent act; and (2) unless the suspect child is taken into custody, the child may do one of the following things: leave the jurisdiction of the court, avoid apprehension, cause physical injury or property damage to another, or tamper with, dispose of, or destroy evidence.² In practice, all of the above review is conducted during business hours.

For juveniles charged as adults, the process is much simpler. Pursuant to Courts and Judicial Proceedings Article, § 2-607, a law enforcement officer must make an application to a District Court Commissioner who may issue an arrest warrant if there is probable cause to believe an individual has committed a qualifying crime, the whereabouts of the defendant are unknown, and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court or the defendant poses a danger to another person or to the community.³ District Court Commissioners are typically available 24 hours and law enforcement officers have unlimited access. Additionally, pursuant to recent legislative action, a Commissioner's authority is not without limits as, upon a finding of good cause, a judge may recall an arrest warrant issued by a District Court Commissioner.⁴

The main issue with the juvenile warrant process is speed. Under the current system, a juvenile suspect who police have probable cause to believe has committed a direct file⁵ offense, which are very serious and might involve a victim, may be apprehended quickly, so long as a law enforcement officer satisfies the requirements for commissioner-based warrants. Arrest warrants are typically disseminated rapidly throughout a law enforcement network so that all officers are apprised and can take action swiftly to prevent any additional harm to the community or another victim.

If direct file is eliminated, law enforcement will have to rely on the juvenile warrant process, which involves multiple levels of review that take time to accomplish. For juveniles accused of violent crimes such as murder, rape or armed carjacking, waiting for the review process and warrant to be complete risks public safety and could result in another person being harmed.

B. Detention

Pursuant to Courts and Judicial Proceedings Article § 3-8A-15, a DJS intake officer has discretion to determine whether a youth may be detained from the point at which that youth is taken into custody. If the intake worker determines that a youth be detained or subject to an alternative to detention, such as community detention, electronic monitoring or shelter care, that decision must be reviewed by a judge the next business day.⁶

² Courts and Judicial Proceedings Article § 3-8A-14.1 (b)

³ Courts and Judicial Proceedings Article § 2-607(c)(6)(iii)

⁴ See Chs. 594 and 595 (2021), Courts and Judicial Proceedings Article § 2-607(e)

⁵ All of the offenses excluded from juvenile jurisdiction as listed in Courts and Judicial Proceedings Article § 3-8A-03(d)(1)-(5) are collectively referred to in juvenile delinquency practice vernacular as "direct file" or "automatic adult."

⁶ Courts and Judicial Proceedings Article § 3-8A-15(d)(1)-(2)

However, if the intake worker decides not to detain, or utilize any alternatives to detention, that decision may not be reviewed, even if the underlying offense is a felony. This means that the State would be precluded from requesting detention until the matter is forwarded to the State's Attorney's Office for authorization to file a Petition under Courts and Judicial Proceedings Article § 3-8A-10(c)(3), which may take up to 25 days.

As such, the State or any law enforcement officer has no remedy to challenge the decision by a DJS intake worker to not detain. If direct file were eliminated, a DJS intake worker would essentially retain judicial authority to determine detention where the underlying offense is murder, manslaughter, carjacking or a serious assault, which exposes a serious flaw that could impact public safety.

C. Waiver

Proponents of the elimination of direct file often address public safety concerns by asserting that, if all cases begin in juvenile jurisdiction, prosecutors can simply use the process outlined in Courts and Judicial Proceedings § 3-8A-06 to waive the most violent juvenile offenders to adult court. That process, however, contains some alarming deficiencies that hamstring prosecutors.

The recent Court of Appeals' decision in *Davis v. State*, 474 Md. 439, 255 A.3d 56 (2020) dramatically altered the manner in which courts decide transfer motions – and by extension, waiver hearings. Generally, a “transfer” involves moving a case from adult to juvenile court, while a “waiver” involves moving a case from juvenile to adult court.⁷ A court must consider five statutory factors in any waiver⁸ or transfer⁹ decision: (1) the age of the child; (2) the child's physical and mental condition; (3) the child's amenability to treatment in any institution, facility, or programs available to delinquents; (4) the nature of the offense(s); and (5) public safety. To assist in the consideration of these factors, the transfer statute provides for a court-ordered study, usually conducted by DJS, that “concern[s] the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case.”¹⁰ Curiously, such a study is not required for waivers. Rather, Maryland Rule 11-113(b) mandates that upon the filing of a waiver, “the court shall order that a waiver investigation be made. The report of the waiver investigation shall include all social records that are to be made available to the court at the waiver hearing.”¹¹

There is also a critical difference between transfer and waiver hearings regarding the burden of proof. In transfer hearings, the burden of persuasion lies with the defendant¹² in that the Court must be persuaded by a preponderance of the evidence that “a transfer of jurisdiction is in the interest of the child or society.”¹³ In waiver hearings, conversely, the burden of persuasion falls

⁷ At times a transfer hearing is referred to as a “reverse waiver” hearing, although such terminology is colloquial and not legally accurate.

⁸ Courts and Judicial Proceedings Article § 3-8A-06(e)

⁹ Criminal Proceedings Article § 4-202(d)

¹⁰ Criminal Proceedings Article § 4-202(e)

¹¹ COMAR 16.16.01.03 directs DJS on the components of any transfer or waiver report, but other than such guidance, there is no other authority.

¹² See *In re Ricky B*, 43 Md. App. 645 (1979)

¹³ Criminal Procedure Article § 4-202(b)(3)

on the State¹⁴ to prove by a preponderance of the evidence that “the child is an unfit subject for rehabilitative measures.”¹⁵

Pragmatically, a court’s waiver or transfer decision typically hinges on the “amenability” factor, and, in fact, the Court of Appeals in *Davis* noted that: “[t]he five considerations are not in competition with one another. They all must be considered but they are necessarily interrelated and, analytically, they all converge on amenability to treatment.”¹⁶ The Court noted, however, that there had been little to no guidance or definition of that factor. To address that issue, the *Davis* Court provided very specific guidelines when considering amenability:

To determine amenability to treatment, the court needs to know what treatment is or will be available to meet the child’s needs and address the child’s problems. Presumably, the State, through DJS or other entities, would have that information as part of a waiver/transfer study, even if it is in the form of options that may depend on further evaluations and the child’s progress. The court needs to determine whether those programs would, in fact, be available to the child, for if not, as to that child, they do not exist. Evidence that there were, in fact, DJS programs that could address petitioner’s needs and problems was presented to the court in considerable detail and was not contradicted. With an eye both toward the welfare of the child and public safety, which, in our view are inter-related, the court needs to make an assessment of whether it is likely that the child would benefit from an available DJS program better than he or she would from anything likely to be available in the adult system and whether that would reduce the likelihood of recidivism and make the child a more productive law-abiding person. Those are quality assessments that can be based on evidence of how those programs or kinds of programs have worked with other children, from actual data or from reliable studies.¹⁷

In short, the Court held that, when assessing “amenability,” a lower court must consider the following factors married the factors into an assessment of “amenability” as follows: (1) whether there are there programs available for the specific needs of the defendant; (2) whether the defendant would benefit from the available programs more than what’s available in the adult system; and (3) whether that would reduce the likelihood of recidivism and make the defendant a more productive law-abiding person.

In practice, this edict from the Court of Appeals requires intensive studies of the psychological, physical, and environmental conditions of the subject defendant/respondent. In response to *Davis*, and in recognition of its role in providing the required information to the courts, DJS, enacted a policy that expanded the Transfer/Waiver Summary to include an analysis by an “Assessment Staffing Team” that will include a psychological evaluation of the youth prior to

¹⁴ See *In re Ricky B*, 43 Md. App. 645 (1979)

¹⁵ Courts and Judicial Proceedings Article 3-8A-06(d)(1)

¹⁶ *Davis v. State*, 255 A.3d at 71

¹⁷ *Davis v. State*, 255 A.3d at 71

the transfer/waiver hearing. The goal is for the Team to answer the “what are the specific needs” and the “what’s available” questions.

In transfer hearings, where the defendant carries the burden, such assessments are helpful to defense counsel who have direct access to the defendant and can ensure participation should the expanded report require additional studies by outside experts. Even in waiver cases, where the burden lies with the State, defense counsel may, and in many instances do, employ outside experts.

The problem is that, in a waiver hearing, where the burden is on the State, the DJS report is the only report a prosecutor can use. That report is not by law the same as a transfer report, and a prosecutor cannot compel an independent assessment because the respondent has a Fifth Amendment right against self-incrimination and does not have to cooperate with the State, nor can that lack of cooperation be utilized against them. In theory, a youth may refuse to cooperate with DJS altogether and the same Fifth Amendment rights would apply. Simply put, in waiver hearings, the State is placed at a disadvantage from the beginning, as they are effectively barred from conducting independent evaluations even if a DJS “Assessment Staffing Team” report is generated and the State disagrees with the conclusions generated by such a team.

In a transfer case, the disparities in access are balanced through the respective burdens of the parties, as there is an incentive for a defendant to cooperate with DJS and outside experts in the hopes of meeting the burden necessary to remove the case to juvenile court. There is no such incentive in waiver matters. If waiver is the only mechanism to get juveniles charged with violent crimes, such as murder, rape, carjacking and first-degree assaults with significant injuries, into adult court, the State will be at a monumental disadvantage. It is far more likely that these matters will remain in the juvenile system simply because the State had less available resources to meet its burden. As such, the fundamental fairness principles involved in any advocacy proceeding would be compromised.

For these reasons, the MSAA requests an unfavorable report on SB 165.

SB 165 - Written Testimony.pdf

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: SB 165
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION TO SENATE BILL 165
JUVENILE COURT – JURISDICTION

I write in opposition to Senate Bill 165 that would start all serious criminal cases in Juvenile Court and require the State to waive the juvenile case to adult court. This is a dangerous and misplaced change in Maryland law. Let me tell you about a few of the defendant's whose cases will start in juvenile court if Senate Bill 165 becomes law.

On February 2, 2008 Nicholas Browning, who was 15 years old, shot his father in the head, shot his mother in the head and killed his younger brothers. All four died. Browning was 6'2" tall, 200lbs. with an IQ of 125 and was a honor student. Browning wore gloves and had a spare magazine on him. This was cold and calculated murder.

Also in 2008, Lewin Powell, who was 16 years old, beat his mother to death with a baseball bat. When his father arrived home, he tried to beat him to death. Powell was a student at McDonogh and beat his mother to death because she kept asking about his failing school grades.

All four of the defendants charged in the death of Officer Amy Caprio were juveniles. The four juveniles stole a car and were in the Perry Hall area of Baltimore County breaking into houses. Their method was for three to break into homes and one to man the getaway car. The one who was in the driver's seat was Dawnta Harris when he was confronted by Officer Amy Caprio. Do those Defendant's really deserve to start their cases in the Juvenile Court? The Circuit Court denied the juveniles who requested a waiver back to Juvenile Court. The driver, Dawnta Harris, who killed Officer Caprio was 16 years old when he committed his crime. He ran over Officer Caprio in cold blood. Officer Caprio confronted Harris when he was behind the wheel. He pretended to open the car door but then gunned the car running over her. He was convicted of Felony Murder and received a Life Sentence. Harris had a juvenile record of stealing cars. While awaiting trial in jail, he was cited for graffiti, pornography, and cussing at guards. His co-defendants were breaking into houses and each were convicted of Felony Murder and received 30 years in prison. All of their cases deserved to start in adult court.

In 1999 Felix Fitzgerald was an inmate at the Charles Hickey School and the victim was the school nurse. Keep in mind this crime happened in the place Defendant's will be housed if you change the law. Obviously since Fitzgerald was at the Hickey School he was still a juvenile. For some reason, the nurse's station was in the building with either the cafeteria or gym and was virtually deserted when those facilities were not being used. On the date of the incident, the Defendant jumped over the dutch door into the nurse's station that was a room not much bigger than a closet. He was

wearing a t-shirt over his face. He grabbed the nurse from behind, strangled her and anally raped her. No one could hear her pleas for help. Although the victim was a nurse, she was so traumatized by this incident that she could no longer work in that capacity and eventually moved out of State. The Defendant received a 40 year sentence for First Degree Sex Offense. Do we want him to start in a juvenile facility? That is in fact where he committed his crime. Where do you hold him while waiting for his waiver hearing, back at Hickey to reoffend?

Benjamin Garris currently 35, convicted of First Degree Murder committed at the age of 16. On October 8, 1995 the Baltimore County Police Department were called to the Sheppard Pratt Hospital for a suspicious condition. At a small cottage on the hospital property they found a small fire that had been ignited with a liquid accelerant. Throughout the cottage they found liquid chemicals that led to a propane tank on the second floor whose valve had been opened with gas leaking out. Found in the cottage was the body of Sharon Edwards, age 28, and the mother of 7 year old, who was working her first overnight shift. Ms. Edwards was a care provider at the cottage which provided residency to five male juveniles. Ms. Edwards was slashed and stabbed 26 times by Garris.

At the time of this incident it was home to three juvenile males. When the police arrived two of the juveniles were present and Benjamin Garris had fled. Found in Garris' room was documentation about setting fires and documents on how to kill people. Thankfully the fire had not consumed the building which would have taken two more lives.

Garris confessed to the murder telling police that when Ms. Edwards pled for her life he responded "You're dead. That's right and now you're nothing but a piece of meat."

During the murder he mimicked the ultra-violent actions from his favorite movie *A Clockwork Orange*.

I have examples of another **38** heinous crimes committed by juveniles from all over the State whose cases would start in Juvenile Court. With their cases starting in Juvenile Court they will likely reside in a juvenile facility for a year while a waiver hearing that requires a waiver summary can be prepared.

I urge an unfavorable report.