



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

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**House Bill 294 – Juvenile Court -- Jurisdiction
House Judiciary Committee – February 10, 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.

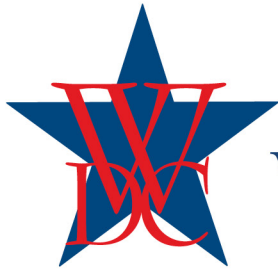
WDC urges the passage of HB 294. This bill would repeal the provisions in the Maryland criminal code that have the effect of automatically charging as adults children as young as 14 years of age who have committed one of 33 specified offenses. WDC supports the proposal to restore the jurisdiction of 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/rreg/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 HB294. 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%2013%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 HB294 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>