



SB 165/HB 294
Juvenile Court - Jurisdiction
Ending Automatic Charging of Youth as Adults
Testimony in Support
Submitted: February 8, 2022

Dear Chairman Clippinger and Honorable Members of the Committee:

The Gault Center (formerly the National Juvenile Defender Center)¹ is a nonpartisan, nonprofit organization dedicated to promoting justice for all children by ensuring excellence in youth defense. The Gault Center supports SB 165/HB 294, which would align Maryland law with established adolescent development science and advance racial justice. This bill is a critical step forward in supporting the success and protecting the futures of Maryland's youth.

Maryland sends more young people per capita to adult court based on offense type than any other state except Alabama.²

A major reason is that Maryland law requires some children to be automatically prosecuted in adult court for 33 offenses—putting it 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.³

Ending automatic transfer: 1) safeguards the constitutional rights of Maryland's children, 2) ensures all cases involving children begin in the more developmentally responsive setting of juvenile court, 3) is a racial justice issue, 4) increases public safety, and 5) is widely supported nationally.

I. Ending Automatic Transfer Safeguards the Constitutional Rights of Maryland's Children

Children in Maryland can be prosecuted in adult criminal court because of their age and their charge. Such laws are developmentally inappropriate and harm youth and families. Maryland's current statutory scheme that allows for automatic transfer of youth to adult court ignores United States Supreme Court

¹ On January 1, 2022, the National Juvenile Defender Center became The Gault Center. The organization is now named for the United States Supreme Court case, *In re Gault*, 387 U.S. 1 (1967), that affirmed young people's right to counsel and right to due process in court.

² *National Trends in Charging Children as Adults*, Marcy Mistrett, The Sentencing Project, July 2021, p.6, <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

³ *End Automatic Charging FAQ SB165/HB294*, Maryland Youth Justice Coalition, <https://linktr.ee/mdjuvenilejusticereform>

jurisprudence that youth be treated differently than adults for constitutional and procedural purposes.⁴ Automatic transfer deprives youth of their critically important liberty interest in being free from the harms imposed on youth by the adult criminal system without supporting any state interest in deterring future crime and reducing recidivism.⁵ In *Kent v. United States*,⁶ the Supreme Court held that the transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty and therefore warrants substantial due process protection.⁷ And since *Kent*, all available data shows the significant racial disparities in the youth who are transferred to adult court.

II. Ending Automatic Transfer Ensures All Cases Involving Children Begin in the More Developmentally Responsive Setting of Juvenile Court

The decision to charge a child in adult criminal court has a disastrous impact on the child, the child's family, and the community. Children in adult criminal court lose all rights to confidentiality. The proceedings in their cases, and often their personal history of trauma and struggle, are laid bare in a public forum.

This proposed law is a crucial step toward treating children as children and affording them the opportunity to move beyond childhood involvement with the court system. It is in alignment with national best practices, developmental science, racial justice, and fundamental decency. The existence of separate juvenile courts in the United States is premised upon an understanding that children are different than adults and more capable of rehabilitation.⁸ The proposed law recognizes that Maryland children should be afforded access to the specialized court system designed for rehabilitation and built to integrate families into the court process.

The adult system is neither designed for nor capable of addressing the myriad needs of youth who become system-involved. Practitioners in juvenile court systems, including judges, prosecutors, and defenders, are expected to have specialized knowledge and training around education, child welfare, school discipline, and other systems that directly impact children.⁹ Children charged as adults in Maryland do not have access to the same specialized, rehabilitative programming available in juvenile courts, which are designed to serve each child's unique needs by taking into account age and adolescent development. The United States Supreme Court has continually affirmed that children are less culpable than adults and more capable of reform.¹⁰

Young people rely far more heavily on the emotional decision-making portion of the brain than fully developed adults. As youth grow, so do their self-management skills, long-term planning, judgment and

⁴ See *J.D.B. v. North Carolina*, 564 U.S. 261, 270-280, (2011). See also *Miller v. Alabama*, 567 U.S. 460, 490-492, (2012).

⁵ See *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

⁶ *Kent v. United States*, 383 U.S. 541 (1966)

⁷ *Id.* at 554.

⁸ See Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 18 *The Future of Child*. 81, 81-83 (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1154670

⁹ *Joint Statement on the Importance of Specialization of Judges, Prosecutors, and Defenders in Juvenile Delinquency Proceedings*, National Council of Juvenile and Family Court Judges (NCJFCJ) et. al., March 2021, <https://www.ncjfcj.org/wp-content/uploads/2021/04/Joint-Statement-on-the-Importance-of-Specialization.pdf>

¹⁰ See *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 490-492, (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

decision-making, regulation of emotion, and evaluation of risk and reward.¹¹ Brain imaging techniques show that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive, social, and emotional information do not fully mature until early adulthood.¹²

Juvenile court systems account for adolescent development and are structured to provide positive interventions as children mature. In contrast, adult court systems are centered around findings of guilt or innocence and the imposition of punishment for convicted offenses.

III. Ending Automatic Transfer is a Racial Justice Issue

In *Miller and Montgomery*, the Supreme Court made clear that the harshest punishments for youth should be reserved for the “rare,” “uncommon,” and irreparably corrupt child. In reality, however, the harshest punishments—those mandatorily applied in the adult criminal justice system—are levied disproportionately against youth of color. Nationally, 47.3 percent of youth who are transferred to adult court are Black, despite Black youth comprising only 14 percent of the total youth population.¹³

Youth of color are overrepresented at every stage of the Maryland court system.¹⁴ Rampant racial inequities are evident in the way youth of color are disciplined in school, policed, arrested,¹⁵ detained, sentenced, and incarcerated.¹⁶ 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.¹⁷ Youth of color are more likely to be tried as adults than white youth, even when being charged with similar crimes. Between 2017–2019, 93 percent of Maryland youth tried as adults were youth of color and 80 percent were Black.¹⁸

The over-policing of Black and Brown communities is one of the greatest drivers of racial disparity in this nation’s mass incarceration system. These increased interactions with police result in those community members being subject to harsh punishments without evaluating the impacts of racial profiling. While mandatory sentencing and transfer schemes seemingly eliminate the possibility of individual bias creeping into decision-making by removing discretion and individualized decision-making, racial disparities persist.

¹¹ See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1011 (2003).

¹² See Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 46-68 (2008).

¹³ See Nat’l Ass’n Of Social Workers, *The Color Of Youth Transferred To The Adult Criminal Justice System: Policy & Practice Recommendations*, 1 (2017), http://www.campaignforyouthjustice.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf (accessed Sept. 20, 2021).

¹⁴ 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.

¹⁵ 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

¹⁶ <https://goccp.maryland.gov/wp-content/uploads/juvenile-dmc-201101.pdf>

¹⁷ Soler M., *Health issues for adolescents in the justice system*, *Journal of Adolescent Health*. 2002;31(6):321–333.

¹⁸ 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>.

In practice, the decision to charge a Black youth as an adult is riddled with implicit bias. Studies have repeatedly shown that Black youth are perceived as being older and more culpable than their white counterparts.¹⁹ There is little doubt that if the children who were taken from their families and charged in adult criminal court were white, there would be widespread, outraged calls to at least start their cases in the juvenile system. This is exactly what this bill does.

While structural racism and implicit bias are also embedded in the juvenile court system, children have a greater opportunity to be assessed specifically in a youth context amongst practitioners and service providers who have a deeper understanding of how race, trauma, adolescent development, family dynamics, and environmental factors intertwine and affect children.

This bill is necessary to advance racial equity and combat systemic inequality.

IV. Ending Automatic Transfer Increases Public Safety

Children charged in the adult system have higher recidivism rates compared to those charged with similar offenses in juvenile court.²⁰ The federal government has recognized that higher recidivism rates of youth in the adult system can be attributed in part to the lack of rehabilitative services in the adult system, issues that arise from housing youth with adults, and the collateral consequences of an adult criminal conviction that disadvantage young people's opportunities, which make it harder for those who eventually return to the community to succeed.²¹ Given this reality, systems that allow children to be charged as adults, especially those without judicial review, serve neither the children who are system-involved nor the public's safety.

V. Ending Automatic Transfer is Widely Supported Nationally

Over the past 15 years, four major legislative trends have emerged: 1) removing youth from adult facilities, 2) raising the age of juvenile court jurisdiction, 3) returning discretion to juvenile judges, and 4) eliminating automatic transfer to adult court.²² Many states have changed their mandatory or automatic transfer provisions—raising the requisite age, eliminating their “once an adult, always an adult” provision, or narrowing the offenses eligible for mandatory transfer—in some cases repealing automatic transfer provisions, despite the fact that these provisions generally involve the most serious offenses.²³

¹⁹ Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *J. Personality & Soc. Psychol.* 526 (2014); Rebecca Epstein, et. al., *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, Center on Poverty Law & Inequality, Georgetown Law (2017).

²⁰ Human Impact Partners, *Juvenile InJustice: Charging Youth as Adults is Ineffective, Biased, and Harmful* (2017), https://humanimpact.org/wp-content/uploads/2018/10/HIP_JuvenileInJusticeReport_2017.02.pdf

²¹ See U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, (2011).

²² Brian Evans, Campaign for Youth Justice, *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System 2005-2020* 9 (2020), campaignforyouthjustice.org/cfyj-reports/item/winning-the-campaign-state-trends-in-fighting-the-treatment-of-children-as-adults-in-the-criminal (

²³ *Id.* at 25-30.

By 2020, 80 percent of states changed their laws to make treating children as adults more difficult.²⁴ Twenty-six states have passed reforms to reduce or eliminate automatic transfer to adult court.²⁵

Prosecutors and other law enforcement are also speaking out against automatically charging youth as adults.²⁶ The National District Attorneys Association's National Juvenile Prosecution Standards state:

The transfer of cases to criminal court should be reserved for the most serious, violent, and chronic offenders. Prosecutors should make transfer decisions on a case-by-case basis and consider the individual factors of each case including, among other factors, the gravity and violent nature of the current alleged offense, the record of previous delinquent behavior of the juvenile charged, and the availability of adequate treatment, services and dispositional alternatives in juvenile court.²⁷

Maryland should **treat kids like kids and end automatic charging**. The Gault Center urges this committee to issue a favorable report on this bill.

²⁴ *Id.* at 6.

²⁵ *National Trends in Charging Children as Adults*, Marcy Mistrett, The Sentencing Project, July 2021, <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-Charging-Children.pdf>

²⁶ See, e.g. <https://www.sfchronicle.com/opinion/openforum/article/Science-and-the-law-says-don-t-try-13611841.php#photo-16915495>; <https://fairandjustprosecution.org/wp-content/uploads/2019/02/1391-Constitutionality-Sign-on-Letter-FINAL.pdf>

²⁷ National District Attorneys Association, Juvenile Prosecution Standards, Standard 4-11.7 (2016).