



BILL: House Bill 96 / Senate Bill 93
Youth Equity & Safety Act
POSITION: Favorable
DATE: February 15, 2023

Last year, the Maryland General Assembly passed the Juvenile Justice Reform Act (JJRA), the most significant overhaul of the juvenile legal system in nearly 50 years when the Department of Juvenile Services (DJS) was created. While the changes brought by the JJRA were monumental and long overdue, it left a significant portion of children behind: children automatically charged as adults. The YES Act will complete the legislative recommendations made by the bipartisan Juvenile Justice Reform Council (JJRC), and end the harmful, discriminatory, and dangerous practice of automatically charging children as adults in Maryland.

The History of Automatically Charging Children as Adults & the National, Common-Sense Push to End It

Between 1986 and 1994, Maryland and 48 other states expanded the automatic charging of children in adult court as a response to the race-based fear-mongering and false predictions of increased crime and the rise of “super-predator” youth.¹ As a result, children in Maryland can automatically be charged in adult court for 33 separate offenses, based on charges levied by police, without considering their youth, development, or vulnerability.

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.² That body met for more than two years, heard from a 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. SB93/HB96 is the result of those recommendations.

These changes would begin to bring Maryland in line with national and international norms. Currently Maryland sends more young people, per capita, to adult court based on offense type than any other state except for Alabama.³ Only nine states send more than 200 youth per year to adult court, Maryland routinely sends four times that amount.

¹ 1986 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. Editorial: Echoes of the Superpredator, *New York Times*, April 14, 2014, www.nytimes.com/2014/04/14/opinion/echoes-of-the-superpredator; Brief for Jeffrey Fagan et. al (*The Criminologists Brief*) as Amicus Curia, *Miller v. Alabama* 567 U.S. 460 (2012) <https://eji.org/files/miller-amicus-jeffrey-fagan.pdf>.

² Maryland HB606: 2019: Regular Session

³ 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>



Because of the harms these laws have caused, in the last decade half of the states across the country have passed reforms narrowing or eliminating automatic pathways that were created during the “super predator” era through which children are transferred to the adult court, granting increased judicial review and discretion in the transfer decisions.⁴ As of 2021, there are 8 states have changed their laws to require *all* their juvenile populations cases to originate in juvenile 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, Oregon, Tennessee, and Texas⁵.

In California, it’s been more than 7 years since the voter initiative known as Prop 57 eliminated all forms of automatic charging of children in adult court and began to require full judicial review prior to charging a child in adult court. 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 50.⁶ California has an estimated population of 39.5 million or 6 times larger than Maryland.⁷

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.⁸ Illinois and California reform implementation demonstrates how many inappropriate cases are swept into the adult system by automatic transfer laws.

Vermont also ended its direct file statute.⁹ Prior to the law change, 16- and 17-year olds could be

⁴ Nebraska, North Dakota, Washington, Nevada, Colorado, Virginia, Connecticut, Rhode Island, and South Carolina have all recently narrowed automatic transfer provisions. 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>.

⁵ In Texas, the age of majority for criminal court is 17.

⁶ 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.^[1]^[1]

⁷ <https://www.census.gov/quickfacts/CA>

⁸ 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>^[1]^[1]

⁹ 2016 Legislative Session, H.95 (Act 153) passed and was signed into law.



directly charged into adult court for any charge at the discretion of the prosecutor. In 2018, 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.¹⁰ In 2019, there were a total of 6 youth (all 18 or 19) prosecuted under the youthful offender statute in Vermont.¹¹ 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, Florida¹² and Oregon¹³ both ended statutory exclusion in their states; while Kentucky¹⁴ and Rhode Island¹⁵ ended mandatory waivers in juvenile court.

In 2020, both Utah¹⁶ and Virginia¹⁷ greatly restricted their direct file statutes, joining Washington State¹⁸ (2018) returning most children charged as adults back to juvenile court. Though we hear near constant reports about the “rise in juvenile crime,” the reality is that arrests for violent crime involving youth continue to decline.¹⁹

While the “super-predator” fiction has been thoroughly debunked, the system established in its wake is still in place in courtrooms across Maryland. The Free State can no longer use those myths, repackaged and regurgitated under the guise of labeling children “repeat violent offenders” to justify continuing the status quo. It is time for Maryland to allow a judge to decide how and when children will be tried in adult court.

Maryland’s Practice of Automatically Charging Children as Adults Causes Irreparable Harm to Youth of Color

<https://legislature.vermont.gov/bill/status/2016/H.95>

¹⁰ 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/>

¹¹ 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>

¹² 2019 Legislative Session, HB 7125 passed and was signed into law. <https://trackbill.com/bill/florida-house-bill-7125-administration-of-justice/1740423/>

¹³ 2019 Legislative Session, SB 1008 passed and was signed into law. <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB1008>

¹⁴ 2021 Legislative Session, SB 36 passed and was signed into law. <https://apps.legislature.ky.gov/record/21RS/sb36.html>

¹⁵ 2018 Legislative Session, H7503 passed and was signed into law. <http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H7503.pdf>

¹⁶ 2020 Legislative Session, HB0384 passed and was signed into law. <https://le.utah.gov/~2020/bills/static/HB0384.html>

¹⁷ 2020 Legislative Session, HB0384 passed and was signed into law. <https://le.utah.gov/~2020/bills/static/HB0384.html>

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

¹⁹ OJJDP, Juvenile Justice Statistics, National Report Series Fact Sheet, “Trends in Youth Arrests for Violent Crimes,” <https://ojjdp.ojp.gov/publications/trends-in-youth-arrests.pdf>.



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.²⁰ 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%. Black youth ultimately tried in adult courts receive significantly more punitive sentences than White youth.²¹

According to the Department of Public Safety and Correctional Services (DPSCS), there are currently 1,132 in DPSCS custody for an offense committed when they were children. Of those, 90.4% are people of color and 81.3% are Black.²²

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 brown young people, who are ultimately not convicted in adult court may be a major contributing factor to why Maryland imprisons a higher percentage of Black people (70%) than any other state in the nation.²³

Maryland's Practice of Automatically Charging Children as Adults is Inefficient and Casts Too Wide of a Net Over Maryland's Children

More than 95% of children automatically charged in adult court²⁴ are eligible for a transfer hearing.²⁵ 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. Under the current law the court must consider five statutory factors in any waiver²⁶ or transfer²⁷ decision: (1) the age of the child;

²⁰ *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.

²¹ 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.

²² Data provided by Human Rights for Kids, testimony submitted 2/15/2023 to this same committee.

²³ 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/>

²⁴ Maryland Courts and Judicial Proceedings Section 3-8A-03.

²⁵ Children over 16 charged with first degree murder are currently not transfer eligible. MD Crim. Pro Code § 4-202 (2013).

²⁶ Courts and Judicial Proceedings Article § 3-8A-06(e)^[1]_{SEP}

²⁷ Criminal Proceedings Article § 4-202(d)



(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.)²⁸

When a child is automatically charged in adult court, the five factors are not considered until the transfer hearing. In FY22, detained youth charged in adult court waited an average of 114 days from the time they were charged until their transfer hearing.²⁹ Federal law has prohibited youth from being housed in adult jails until a judge determines they are eligible to be tried in adult court since December 2021.³⁰ Maryland is out of compliance with federal law and many children are housed in adult jails throughout the state. In the most recent DJS State Advisory Group meeting, the JJDPa monitor reported the state is aware of at least 691 violations of the core requirements of the JJDPa - like sight and sound separation from adult inmates and timely removal from adult jail facilities to youth detention in FY2022 alone.³¹ 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.³²

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.

Nearly 9 out of 10 of children (87%) initially charged as adults do not end up with an adult criminal conviction.³³ Nearly half (43%) have their cases transferred and another third (35%) are dismissed outright. Of 871 cases of children charged in Maryland adult court, only 110 of them resulted in adult criminal conviction.³⁴ Almost all the remaining 761 cases, however, went through the lengthy, expensive, and resource intensive transfer hearing process. In some of those cases, the prosecutor agreed to transfer, in others there was lengthy litigation before a Judge ultimately granted the transfer motion.

²⁸ Criminal Proceedings Article § 4-202(e)^[SEP]

²⁹ Dept. of Juv. Services, Data Resource Guide FY2022, Youth Charged as Adults Pending Transfer, 135. https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf

³⁰ Juvenile Justice and Delinquency Prevention Act Reauthorization 2018

³¹ Bill Harper, Juvenile Justice Compliance Monitor and Anti-Human Trafficking Training Coordinator, Governor's Office of Crime Control and Prevention, oral report JJDPa Maryland Juvenile Grant Planning and Review Council, January 23, 2023. DJS Automatic Charging of Children Briefing, January 24, 2023. https://mgaleg.maryland.gov/meeting_material/2023/jpr%20-%20133190439744448914%20-%20Briefing%20Materials.pdf

³² Campaign for Youth Justice. Key Facts: Youth in the Justice System. June 2010, <http://www.campaignforyouthjustice.org/images/factsheets/KeyYouthCrimeFactsFeb222018Revised.pdf>

³³ 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>

³⁴ 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>



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 just as many or 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.³⁵ Ninety-five (95%) of 1st degree assault cases where children are charged in adult court did not result in an adult criminal conviction, but hundreds of children had their treatment and care needlessly delayed and deferred. The current law allows the charging police officer to determine which children are subject to adult jurisdiction, thereby incentivizing overcharging to coerce a plea.

This bill will streamline a broken system. Ending automatic 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

“[charging teenagers in] 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.”³⁶

³⁵ 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>

³⁶ Task Force on Community Preventive Services, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, 2007. www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm. (The Task Force on Community Preventive Services (Task Force), which directs the development of the Guide to Community Preventive Services (Community Guide), conducted a systematic review of published scientific evidence concerning the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system to determine whether these transfers prevent or reduce violence among youth who have been transferred and among the juvenile population as a whole. For this review, transfer is defined as placing juveniles aged <18 years under the jurisdiction of the adult criminal justice system. The review followed Community Guide methods for conducting a systematic review of literature and for providing recommendations to



In other words, charging kids in adult court is likely to increase recidivism and “increase the social cost of juvenile crime.”³⁷

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.³⁸ In Maryland, people leaving the adult prison system have a average 35.1% 3 year re-incarceration rate compared to a 15.4% average re-incarceration rate for youth transferred from adult court to juvenile court who were given treatment and intervention in DJS committed facilities.³⁹ The reincarceration rate is even lower for youth charged as adults who are transferred to juvenile court and only given a probation disposition. Those youth only end up reincarcerated at an average rate of only 10%. That is less than 1/5 the recidivism rate of young adults released from DPSCS custody before the age of 25, who have a 48.8% reincarceration rate.

This should not be surprising, both because the resources in the adult system are not developmentally appropriate, and the small number of young people who remain in the adult system are not involved long enough to access the few resources that exist. Most young people sentenced in adult court for armed robbery and assault receive an actual sentence of 3 years or less, and 94% of all young people sentenced as adults for handgun possession receive 18 months or less.⁴⁰ For children who are incarcerated, the most rehabilitative option available is the Patuxent Youth Program (PYP), which is largely inaccessible and insufficient: 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.⁴¹

public health decision makers. Available evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth. Available evidence was insufficient to determine the effect of transfer laws and policies on levels of violent crime in the overall juvenile population. On the basis of these findings, the Task Force recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence.)

³⁷ Reforming Juvenile Justice, 134. <https://www.nap.edu/read/14685/chapter/1>

³⁸ *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>.

³⁹ DPSCS, *Recidivism Report*, November 15, 2022. https://dpscs.maryland.gov/publicinfo/publications/pdfs/2022_p157_DPSCS_Recidivism%20Report.pdf; DJS Data Resource Guide FY2022 at page 213. DJS Automatic Charging of Children Briefing, January 24, 20223. https://mgaleg.maryland.gov/meeting_material/2023/jpr%20-%20133190439744448914%20-%20Briefing%20Materials.pdf.

⁴⁰ Vera Institute, Preliminary Findings: Youth Charged as Adults in Maryland, December 10, 2020. <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf> at 14.

⁴¹ FY20 Patuxent Institutional Annual Report. <https://dpscs.maryland.gov/rehabservs/patx/patx.shtml>. For more information, please see the written testimony of Dr. James T. Fleming, testimony submitted 2/15/2023 to this same committee. Dr. Fleming is a Maryland forensic psychologist who spent 20 years working at the Patuxent Institution.



DJS can and does successfully serve young people charged and convicted of serious offenses: over 55% of the youth currently in DJS detention facilities are youth charged as adults pending transfer hearings.⁴² 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.⁴³ 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.⁴⁴

We know that rehabilitation works,⁴⁵ because the juvenile system is designed to address the developmental, somatic, and mental health needs of children and young adults. Research has in fact demonstrated that trying children in adult court does not decrease recidivism and in fact increases rates of criminality among youth.^{46,47}

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 has 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-

⁴² DJS Data Resource Guide FY2022 at page 127.

⁴³ DJS Data Resource Guide FY2022 at page 157.

⁴⁴ DJS Data Resource Guide FY2022 at page 158-60.

⁴⁵ 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.

⁴⁶ 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>

⁴⁷ 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>.



building, and restorative justice (like those provided in the juvenile system) have been shown to 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.⁴⁸

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 SB93/HB96 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 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. Under the current regime, a 16- or 17-year-old child who is charged with First Degree murder or rape is ineligible for their case to be transferred to juvenile court, even if after a trial or plea the child is found guilty of a lesser offense that would have originally made them eligible for transfer.⁴⁹ The current transfer regime means that an officer’s original decision to charge a child with the most serious offenses in our state—without the benefit of full information of mitigating circumstances or full context—deprives *any* judge of discretion to send such a child to juvenile court even when it is warranted.

In sum, this bill does not prevent children from being tried in adult court. SB93/HB96 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 factors⁵⁰, and decide if the case belongs in adult or juvenile court.

⁴⁸ 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.

⁴⁹ Criminal Proceedings Article § 4-202(d).

⁵⁰ *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.



Conclusion

Maryland has been wrestling with this issue for more than a half century. 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.”⁵¹

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. SB93/HB96 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.

⁵¹ Report of the Legislative Council Special Committee on Juvenile Courts, January 1966 (occasionally referred to as the “Rasin Report”)