



**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.