

Raise the Age



Key Takeaways

Human Rights for Kids rated Maryland as one the [worst human rights offenders for children in the criminal legal system](#)¹ – in large part because Maryland sends an inordinate number of children to adult prison.² The United States is the only developed nation that allows young people to be prosecuted in adult court.³ The practice of charging children as adults makes our communities less safe⁴, overburdens the system, and prevents young people from growing into productive citizens. Maryland allows for children as young as 14 to be automatically charged in adult court (direct file.) Children age 16 and 17 charged with 32 offenses, including some misdemeanors, are automatically sent to the adult criminal justice system.⁵ The vast majority will see their cases dismissed or moved to juvenile proceedings, but not before we spend hundreds of millions of dollars to imprison them pre-trial.

Charging children as adults is:

Contradicted by Science The U.S. Supreme Court has acknowledged in the *Roper*, *Miller*, and *JDB* line of cases that decades of research into adolescent brain development has proven young people are less culpable than adults who commit the same crimes and more likely to respond to rehabilitation available in the juvenile system.⁶

Waste of Resources Maryland direct files charges against nearly 1,000 young people in adult prison every year. Nearly 3/4 children have their cases transferred to juvenile court, dismissed, or are given time served, but not before they spend weeks, months, and years behind bars not receiving any services.⁷

Unpopular In a 2014 poll, 65% of voters agreed that juvenile offenders should be treated differently from adult offenders.⁸

Discriminatory Although Black youth make up only 30 % of the overall youth population in Maryland they account for 78 % of those charged in adult court.⁹

Harmful Youth housed in adult jails are roughly five times more likely to commit suicide.¹⁰



Charging children as adults has proven to be an abject policy failure. Youth who are prosecuted in the adult system are 34% more likely to recidivate and with more violent offenses than those whose cases are handled in the juvenile system.¹¹ Youth sentenced as adults carry their criminal record their whole life, diminishing their chances to find jobs, access decent housing, obtain student loans, go to college, or join the military.

Since 2015, more than one-third of states have taken legislative action, executive action or both to limit the number of juvenile offenders who are exposed to adult court or adult incarceration facilities.¹² Prosecuting children in adult court is not achieving its goal of reducing recidivism or making Marylanders safer. In fact, sentencing children in adult court has generally resulted in increased arrest for subsequent crimes, including violent crime, when compared with those children whose cases were handled in the juvenile justice system.¹³

What Maryland Has

Maryland has two mechanisms that cause children to be prosecuted in adult criminal court: waiver and transfer. Waiver is when a case begins in Juvenile Court and a prosecutor requests the case be moved to adult court. A hearing is conducted and a judge can decide to deny or grant the request. Direct file is when a child as young as 14 is charged with one of 33 crimes that are statutorily excluded from juvenile court.¹⁴ Most children automatically charged as adults are eligible to be transferred¹⁵ to Juvenile Court if the defendant requests it and a judge grants the request. However, 16 and 17 year olds charged with one of four offenses¹⁶ are not eligible for transfer.

Between FY2017-2019 2,421 children were automatically charged as adults in Maryland¹⁷ and 220 were waived to adult court¹⁸. In the last three fiscal years, 711 children were sentenced as adults for offenses tracked by the Maryland State Commission on Criminal Sentencing Policy, 15 of those children received life sentences.¹⁹

An analysis done by the Abell Foundation found that for children charged as adults in Baltimore City, “only 12 percent of all juveniles who had their cases resolved in adult court received a sentence of jail time in excess of their time served pretrial.” Nearly half (46%) of children charged as adults in Baltimore between 2012-2017 had their cases dismissed (nolle pros, stet, dismissed, or found not guilty.) Compare that to young people who had their cases transferred to the juvenile system – where



70% of young people were either committed for placement or put on probation. This is not a new phenomenon. A study by the Community Law in Action (CLIA) Just Kids project found that 70% of children charged as adults had their cases dismissed or sent juvenile court prior to 2014.²⁰

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In the past five years, children charged as adults in Maryland have spent almost a million days behind bars pre-transfer hearing at a cost of between \$100-1000 per day. Three-fourths of those children will be moved to the juvenile system, their cases dismissed, or be given time served. Raising the age of juvenile jurisdiction is not only better policy, it will save the State hundreds of millions of dollars.

What Works

Charging youth as adults is a legacy of the outdated “tough on crime” policy approach that imagined young people of color as “Super predators” incapable of rehabilitation. These racist, operationalized into law, have caused incalculable harm to generations of Maryland’s youth, families, and communities — particularly communities of color.

Numerous national studies have categorically shown sentencing children in adult court increases recidivism, and therefore does not promote public safety. In fact, the United States Center for Disease Control concluded the policies of charging children as adults “have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred [to the adult criminal system] compared with those retained in the juvenile justice system.”²¹ Six large-scale studies have all found greater overall recidivism rates among juveniles who were prosecuted as adults.²² These poor outcomes are attributable to a variety of causes, including the direct and indirect effects of criminal conviction on the life chances of transferred youth, the lack of access to rehabilitative resources in the adult corrections system, and the hazards of association with older criminal “mentors”.²³

Sentencing children in adult court doesn’t work to reduce recidivism because it fails to provide youth with age-appropriate rehabilitative treatment that will allow them to lead productive lives post-incarceration. Adult corrections personnel lack the specialized training to meet the educational and mental health needs of young people and cannot provide the necessary programs, classes or activities to address their rehabilitative potential.²⁴ The overall recidivism rates for Maryland are approximately 40%²⁵; as compared to the 20% re-incarceration rate for children released from DJS programs.²⁶



Although, theoretically, Maryland’s law favors housing children detained pending transfer hearings in juvenile facilities, in practice the exception to the rule is so broad that many children are still being detained in adult facilities. The most recent data is for 2016, and in that year 641 children were admitted to adult detention centers.²⁷ The majority those children were detained in Baltimore City, Baltimore County, Montgomery County and Prince George’s County. Because adult jails are not equipped to handle child inmates they often place children in solitary confinement as “protective custody”. Solitary confinement has been shown repeatedly to increase suicidality and poorer outcomes in general,²⁸ causing the American Psychological Association to call the practice unconscionable, dangerous, and inconsistent with best practices to such a degree as may constitute cruel and unusual punishment.²⁹

Children held in adult facilities are in much greater danger than adults. Children are five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates or beaten by staff.³⁰ “Even though adolescents represent only a small proportion of inmates in adult facilities, in 2005, 21 percent of all victims of substantiated incidents of inmate-on-inmate sexual violence in jails were juveniles younger than age 18.”³¹ Adolescents are also far more likely to be psychologically affected by the confinement and restrictions imposed than their adult counterparts and are thus far more likely to commit suicide; according to one report, youth in adult facilities were eight times more likely to commit suicide than those held in the juvenile justice system.³²

Barriers to success and recidivism rates are well documented, and were recently outlined as part of Maryland’s Justice Reinvestment Act.³³ The collateral consequences of being sentenced in adult court are the for children as for adults. Unique to children is that these adult collateral consequences begin before the child has reached adulthood and stem from acts committed before they were fully able to anticipate and understand the long-term consequences of those acts.

Recommendations

1. Raise the age of juvenile court jurisdiction
 - a. Ban waiver for children under the age of 14.
 - b. Eliminate direct file for all 14 and 15 year-old children.
 - c. Eliminate direct file for 16 & 17-year-old children.
2. Restrict waiver to young people 16 or older.
3. Collect and publish sentencing data regarding children charged as adults, in addition to disaggregated data on racial, ethnic, and gender of children



charged, tried, and convicted as adults. Update HB 943 (2002) to collect all necessary data on youth charged as adults. Require GOCCP to report:

- a. Racial and ethnic disparities in the filing of waiver petitions;
 - b. Racial and ethnic disparities in direct file charges;
 - c. Racial and ethnic disparities in sentencing of children in adult court;
 - d. Racial and ethnic disparities in charging;
 - e. Track and report non-exclusionary offenses involved in every waiver;
 - f. Track and report between how many children are charged with Murder 1st degree, Murder 2nd degree, & Attempt (currently not distinguished in reporting.)
 - g. Track and distinguish between degree of Rape and Sex Offense in reporting data. (Currently not distinguished in reporting.)
 - h. Track and report what “handgun possession” each child is charged with. (currently not distinguished in reporting.)
 - i. Cross tabulate and disaggregate all data by race, gender, and jurisdiction.
4. Place burden of proof on the state at transfer hearings.
 5. Allow transfer to juvenile court for all offenses, including those carrying a life sentence.
 6. Permit transfer at sentencing where the child was acquitted of the charge carrying a life sentence, but convicted of a crime which was statutorily excluded as well as for those for which it was not.
 7. Requires Judges presiding over Waiver and Transfer Hearings to attend additional yearly training regarding adolescent development and evidence based best practices for rehabilitating children.
 8. Require DJS to strengthen services provided it to emerging adults (ages 17-20.)

Literature Review

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¹ Human Rights for Kids, National State Ratings Report, Nov. 2020.

<https://humanrightsforkids.org/publication/2020-national-state-ratings-report/> (he HRFK National State Ratings Report examines **12 categories** of law that are vital to establishing a basic legal framework to protect the human rights of kids in the criminal justice system. These categories cover four main areas, including, (1) entrance into the juvenile and criminal justice systems, (2) the treatment of children as adults, (3) conditions of confinement, and (4) release and social reintegration of child offenders. The purpose of the report is to help educate the public and public policymakers on what reforms need to take place in order to better align our laws with human rights principles, including those found in the U.N. Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. The report also aims to inspire policy change by uplifting and celebrating the states that are doing well, while holding states that aren't doing well accountable for their unjust laws.)



² In FY2019, 903 children were charged as adults, in FY2018 912, in FY2017 826. *Juveniles Charged as Adults in Maryland 7/1/16-12/31/16; 1/1/17-6/30/17; 7/1/17- 12/31/17; 1/1/18-6/30/18, 7/1/18-12/31/18 and 1/1/19 – 6/30/19*. Governor’s Office on Crime Control and Prevention. <http://goccp.maryland.gov/reports-publications/juveniles-reports/juveniles-charged-adults-hb-943/>.

³ Inter-American Commission on Human Rights, *The Situation of Children in the Adult Criminal Justice System in the United States*, 1 March 2018, <https://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf>. (“The IACHR has also observed that this phenomenon of child criminal defendants being treated as adults is part of a broader nationwide pattern in the United States of failure to protect and promote the rights of children, and failure to uniformly define “child” under the law in order to protect the fundamental human rights persons under the age of 18.”) The United States has signed the UN Convention on the Rights of the Child (UNCRC), but is the only United Nations member state that is not a party to it. <https://www.unicef.org/child-rights-convention/convention-text-childrens-version>.

⁴ UCLA. *The Impact of Prosecuting Youth in the Adult Criminal Justice System: A Review of the Literature*. UCLA School of Law Juvenile Justice Project; 2010. <http://www.campaignforyouthjustice.org/documents/UCLALiterature-Review.pdf>; RE Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention) (June 2010); E. Mulvey and C.A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court.*, *JUVENILE JUSTICE BULLETIN*, WASHINGTON, D.C. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, December 2012.

⁵ Md. Code Ann. CJP §3-8a-03

⁶ “These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.” *Thompson*, *supra*, at 835 (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford*, 492 U. S., at 395 (Brennan, J., dissenting). The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed. Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.” *Johnson*, *supra*, at 368.” *Roper v. Simmons*, 543 U.S. 551 (2005.)

⁷ See *supra*, note 2.

⁸ Pew Charitable Trusts. *Public Opinion on Juvenile Justice in America*. (2014). <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/public-opinion-on-juvenile-justice-in-america>.

⁹ *Supra*, note 2.

¹⁰ According to the Bureau of Justice Statistics, the suicide rate for youth in adult jails was 36 per 100,000 in 2014 (Noonan, Margaret E., “Mortality in Local Jails, 2000-2014 – Statistical Tables” (2016). Available at <https://www.bjs.gov/content/pub/pdf/mlj0014st.pdf>). The rate of suicides of juveniles in juvenile custody is about the same as the suicide rate of youth in the general population (Snyder, Howard N. “Is Suicide More Common Inside or Outside of Juvenile Facilities?” *Corrections Today* (February 2005). www.ncjj.org/PDF/Howardpubs/Research_Notes_2_05.pdf); and according to the Centers for Disease Control and Prevention, the suicide rate for 16-17 year olds in the general population from 2000-2015 was 6.98 per 100,000 (Generated using the Web-based Injury Statistics Query and Reporting System (WISQARS) at <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>).

¹¹ Robert Hahn, et al. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, MORBIDITY AND MORTALITY WEEKLY REPORT, Vol 56, No:RR9, Nov. 2007.

¹² Connecticut, Mississippi, Massachusetts, Illinois and New Hampshire are among the states that have recently raised the age of criminal responsibility to 18. South Carolina, Louisiana, North Carolina and New York have all raised the age of juvenile jurisdiction in the past five years alone. The latter two were the only states in the union to automatically include all 16-year-olds in the adult system – starting this year they include most youth under 18 in juvenile court. Connecticut, Illinois, and New Jersey raised the age at which a youth could be moved from juvenile to adult court (15 for CT and NJ, 16 for IL). Kansas and Vermont set a minimum age for waiving a child to adult court (14 and 12 respectively). California now requires that a judge take into consideration maturity, age, and other indicators before moving a child to adult court on a limited number of offenses and Texas passed a bill that permits young people to appeal a transfer to adult court immediately rather than wait for a conviction. Both Illinois and Utah passed laws that lower the number of offenses that trigger a child being automatically being charged in adult court – for Illinois it went from five to three offenses. Delaware passed a bill that gives adult court judges the ability to send a case back to juvenile court. This would be a significant check on the many automatic paths to transfer in Delaware, including any 15-year-old charged with a felony while in possession of a firearm. Delaware already empowers its attorney general’s office to send an automatically transferred youth back to juvenile court if it serves the interest of justice. Indiana has passed a law that now permits adult court judges to consider waiving a youth back into juvenile court after an automatic transfer.

¹³ Robert Hahn, et al. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, MORBIDITY AND MORTALITY WEEKLY REPORT, Vol 56, No:RR9, Nov. 2007.

¹⁴ For children at least 14 years of age jurisdiction begins in adult court if the charge is either First Degree Murder or First Degree Rape or the attempt of either. Excluded offenses for children at least 16 years of age those crimes are: Abduction; Kidnapping; Second Degree Murder and its attempt, Manslaughter, except involuntary manslaughter; Second degree rape and its attempt, Robbery with a dangerous weapon and its attempt; Third degree sexual offense; under CR § 3-307(a)(1); Violating restrictions on possession or sale of firearms (PS § 5-133, 5-134, 5-138, or 5-203) Using, wearing, carrying, or transporting a firearm during and in relation to drug



trafficking; Use of a firearm under § 5-622 of the Criminal Law Article, Carjacking or armed carjacking, First degree assault, Wear/carry/transport a handgun, Using a firearm in commission of a violent crime, Use or possession of a machine gun in a crime of violence, and Use of a machine gun for aggressive purposes. Md. Code Ann. Courts and Judicial Proceedings §3-8A-03(d)(4).

¹⁵ Transfer was formerly referred to as Reverse Waiver in Maryland's statutory and case law, and is still often referred to as Reverse Waiver many states and in scientific studies and policy literature.

¹⁶ Code of Md., Sec. 3-804.

¹⁷ *Juveniles Charged as Adults in Maryland 7/1/16-12/31/16; 1/1/17-6/30/17; 7/1/17-12/31/17; and 1/1/18-6/30/18*, Governor's Office on Crime Control and Prevention. <http://goccp.maryland.gov/reports-publications/juveniles-reports/juveniles-charged-adults-hb-943/>

¹⁸ 2018 DJS Data Resource Guide, p 245.

¹⁹ Per data given to OPD by Maryland Sentencing Guidelines Commission on July 26, 2019 regarding youth sentenced as adults.

²⁰ Just Kids Partnership, *Just Kids: Baltimore's Youth in the Adult Criminal Justice System*, 2014. <http://justkidsmaryland.org/wp-content/uploads/2014/06/Just-Kids-Report.pdf>

²¹ Robert Hahn, et al. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, MORBIDITY AND MORTALITY WEEKLY REPORT, Vol 56, No:RR9, Nov. 2007

²² Patrick Griffin, et al, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Sept. 2011, 1, 8 JUVENILE JUSTICE BULLETIN, WASHINGTON, D.C., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION at p. 26.

²³ Patrick Griffin, et al, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Sept. 2011, 1, 8 JUVENILE JUSTICE BULLETIN, WASHINGTON, D.C., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

²⁴ CAMPAIGN FOR YOUTH JUSTICE, *THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 6-7 (2007)*; see also RICHARD E. REDDING, *JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY?*, JUVENILE JUSTICE BULLETIN (Office of Juvenile Justice and Delinquency Prevention) (June 2010).

²⁵ Lauren Cahalan, et al, *Recidivism and Barriers to Successful Reentry*, August 2018. https://publicservicescholars.umbc.edu/files/2016/11/Recidivism-and-Barriers-to-Successful-Reentry_Final.pdf

²⁶ Department of Juvenile Services Data Resource Guide 2018 at 187.

²⁷ *Juveniles Charged as Adults and Held in Adult Detention Facilities: Trend Analysis and Population Projections*, Governor's Office of Crime Control and Prevention, Maryland Department of Juvenile Services, Office of Budget and Fiscal Services

²⁸ Lindsay M. Hayes, *Juvenile Suicide in Confinement: A National Survey*. US Department of Justice, OJJDP Report, February 2009. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y 325 (2006), http://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/24

²⁹ Clinton Anderson, *Letter to Senator Cory Booker on behalf of the American Psychological Association dated June 8, 2017*. <https://www.apa.org/advocacy/criminal-justice/juvenile-solitary-confinement.pdf>

³⁰ RICHARD E. REDDING, *JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY?*, JUVENILE JUSTICE BULLETIN (Office of Juvenile Justice and Delinquency Prevention) (June 2010) at 7.

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³² See Beyer, M., *Experts for Juveniles At Risk of Adult Sentences*, in P. Puritz, A. Capozello, & W. Shang (Eds.), *MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICES* (Washington, DC: American Bar Association Juvenile Justice Center) (1997); see CAMPAIGN FOR YOUTH JUSTICE, *JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA* 10 (2007) (citing MUMOLA, C.J., *SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS* (2005: Washington, D.C: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics).

³³ Lauren Cahalan, et al, *Recidivism and Barriers to Successful Reentry*, August 2018. https://publicservicescholars.umbc.edu/files/2016/11/Recidivism-and-Barriers-to-Successful-Reentry_Final.pdf