



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

Testimony of Josh Rovner

**Senior Advocacy Associate
The Sentencing Project**

In support of SB853

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Proceedings Committee**

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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 racial disparities and other unjust policies and practices. We are grateful for this opportunity to submit testimony generally supporting SB853. We thank Senator Carter for her leadership in sponsoring this legislation and the Juvenile Justice Reform Council (JJRC) for its efforts crafting it.

This legislation was derived from JJRC's excellent work, started under SB856/HB606 in the 2019 legislative session. Such a task force might have met a few times and put forward tepid recommendations that more study or more data are needed to address the needs of our youth. Instead, the JJRC addressed the minimum age of jurisdiction, diversion, probation and detention reform, the utilization of out-of-home commitment, and youth charged as if they were adults. In each case -- except the last of these issues, where it did not look for the data nor use available proxies -- the JJRC found that the juvenile justice system is pervaded by racial and ethnic inequities and that it can be made smaller for the betterment of youth and the state of Maryland.

As a member of the Maryland Youth Justice Coalition, The Sentencing Project supports the bill, but our support is limited by the JJRC's refusal to state the obvious about youth charged as if they were adults or to put forward any recommendations to eliminate (or even merely restrict) automatic transfer that would have found a home in this bill. This testimony is limited to three issues:

1. Support for raising the minimum age of juvenile court jurisdiction.
2. Support for limiting the use of detention and commitment.
3. Urging the Committee to reform transfer laws without delay.

Maryland Should Remove Children Under 13 years old from its Juvenile Courts

SB853 removes almost all cases of children under 13 year old from the jurisdiction of the juvenile justice system. Dismissal and informal handling of youth cases is a common outcome for all youth, but even more so for the youngest children. Just one in four complaints involving a child under 13 years old has authorized formal petitions in FY2020, a rate consistent with prior years. Removing children under 13 years old from the courts' jurisdiction would have removed 374 children from formal processing in FY2020; just three percent of them were charged with felonies.¹

These arrests open the pipeline for young children to spend their lives enmeshed in the justice system. Probation is a common sentence, offered in roughly one quarter of formally processed cases, meaning about 100 children under 13 years old are issued juvenile probation every year. The decision to keep these children in the system at all is likely to lead to deeper involvement subsequently. A child who shoplifts while on probation may be incarcerated for it; a child who is not on probation will not.

Removing these children from the juvenile courts is a modest reform, which is not to say it is unnecessary. Roughly 30 percent of Maryland's children are non-Hispanic Black,² yet in FY2020, more than 70 percent of intake complaints involving children under 13 years old involved Black children.

¹ Data in this testimony relies on the Maryland Department of Juvenile Services's Data Resource Guide for FY2020.

² Puzzanchera, C., Sladky, A. and Kang, W. (2020). "Easy Access to Juvenile Populations: 1990-2019." Online. Available: <https://www.ojjdp.gov/ojstatbb/ezapop/>

Maryland's experience disproportionately arresting its Black youth aligns with research showing Black youth in this country are not allowed a childhood. **Psychologist Phillip Atiba Goff and his colleagues found Black youth -- especially boys -- are viewed as less innocent than their white peers and, moreover, are estimated by law enforcement and the general public to be much older than their actual age.**³

The correct response is to remove children from the jurisdiction of the courts entirely without carveouts for a set of exceptionally rare circumstances. The American Academy of Pediatrics⁴ and Society for Adolescent Health and Medicine⁵ both recommend passage of legislation to exclude children under 13 years old from juvenile courts entirely, as does The Sentencing Project.

Maryland Should Limit the Use of Detention and Commitment

The second piece of the bill, like the first, addresses the common-sense need to keep youth charged with low-level offenses out of detention and commitment. Youth charged with misdemeanors comprise about 40 percent of youth in detention. As with all points of contact with the juvenile justice system, Black youth are disproportionately detained: nearly 80 percent of youth in detention are Black.

Consistent with other states, Maryland is detaining and committing significantly fewer youth than in prior years, a change we can all welcome. The juvenile detention population fell from 275 in FY2014 to 145 in FY2020. Maryland has seven youth detention centers with a capacity for 411 youth. Thankfully, those facilities have many empty beds, with an average daily population of 253 youth in FY2020, 145 of whom are held on juvenile delinquency charges, alongside 108 youths held on criminal charges as if they were adults. Given the importance of peer interactions, placing youths who are at a low risk of reoffending or have been charged with low-level offenses in detention is a pathway toward more serious offending.

Following the closure of J. DeWeese Carter Center and Meadow Mountain Youth Center, Maryland has five DJS-operated commitment programs. Their closures were correctly predicated on the fact that they are unnecessary, given excess capacity elsewhere. The average daily population of committed youth fell from 901 in FY2014 to 314 in FY2020.

Nevertheless, **DJS's \$271 million budget is heavily weighted toward operating these facilities. Essentially half (49 percent) of DJS's FY2020 budget is directed toward state-operated facilities.** Surely, this committee can find a better use of \$131 million. Limiting detention and commitment for low-level offenses is another step toward closing more facilities and directing the savings toward all our youth, away from these facilities, giving them and their families the support they need to thrive.

³ Goff, P. A., Jackson, M. C., Di Leone, B. A., Culotta, C. M., & DiTomasso, N. A. (2014). The essence of innocence: consequences of dehumanizing Black children. *Journal of personality and social psychology*, 106(4), 526–545.

<https://doi.org/10.1037/a0035663>

⁴ Owen MC, Wallace SB, AAP Committee on Adolescence. Advocacy and Collaborative Health Care for Justice-Involved Youth. *Pediatrics*. 2020;146(1):e20201755

⁵ Society for Adolescent Health and Medicine (2016). International Youth Justice Systems: Promoting Youth Development and Alternative Approaches: A Position Paper of the Society for Adolescent Health and Medicine. *The Journal of adolescent health : official publication of the Society for Adolescent Medicine*, 59(4), 482–486.

<https://doi.org/10.1016/j.jadohealth.2016.08.003>

Maryland Must Address Its Transfer Laws

The need to address Maryland’s transfer laws is clear, and our youth cannot wait for these reforms.

- Maryland’s automatic transfer law is unusually harsh.
- Charging youth as if they were adults harms public safety.
- Eliminating automatic transfer would still allow youth to be charged as if they were adults.

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.⁶ 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.⁷

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.

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.

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 for equivalent offenses. Howell, et al., note that “research consistently shows lower recidivism rates in the juvenile justice system than in the criminal justice system.”⁸

The CDC’s Task Force on Community Preventive Services reviewed decades of literature, concluding that sending a youth to the adult system generally increases, not decreases, rates of violence among youth.⁹ Automatically transferring 16- and 17-year olds accused of specific offenses in the name of deterrence or public safety also contradicts findings from the National Research Council, which supports

⁶ 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.

⁷ Feld (1987) at 512-513.

⁸ 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.

⁹ The Community Preventative Services Task Force (2003, April). Violence Prevention: Policies Facilitating the Transfer of Juveniles to Adult Justice Systems. Online: <https://www.thecommunityguide.org/findings/violence-prevention-policies-facilitating-transfer-juveniles-adult-justice-systems>.

“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.¹⁰

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, 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.

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, 307 of them limiting employment in some form. A 16-year old should not be saddled with such lifelong consequences based on a poor, though impulsive, decision.

Eliminating Automatic Transfer Would Still Allow Youth to Be Charged As Adults

Automatic transfer is just one method by which youth can be charged in criminal courts. **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 discretionary waivers.

The National Research Council opposes transfer based solely on specific offenses, arguing instead for individualize decisions that consider other factors:

But even for youth charged with serious violent crimes (e.g., felonious assault, robbery, kidnapping, rape, carrying a firearm in the commission of a felony), an individualized decision by a judge in a transfer hearing should be the basis for the jurisdictional decision. The committee counsels against allowing the prosecutor to make the jurisdictional decision, as is allowed under direct-file statutes. **The committee also opposes automatic transfer based solely on the offense with which the youth is charged because it fails to consider the maturity, needs, and circumstances of the individual offender or even his or her role in the offense or past criminal record**—all of which should be considered in a transfer hearing (emphasis added).¹¹

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.

¹⁰ National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14685>, p. 134

¹¹ National Research Council (2013), p. 135.

Youth are transferred into adult court are often not sentenced there. In fact, most 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 allows the state to begin serious cases in the juvenile courts without eliminating transfer.

Maryland Youth Cannot Wait for Comprehensive Reforms

On topic after topic, the JJRC found sharp racial and ethnic disparities in juvenile justice. Moreover, the research cited above clearly demonstrates that transfer does not benefit public safety; transferred youth are more likely to reoffend than those who remain in the juvenile system. Other states have come to this conclusion, and others will soon join them. Maryland stalls.

The decision to exclude transfer from SB853 is based on purportedly inadequate data from a few jurisdictions on its prevalence.¹² There can be little doubt that the data, if it is ever presented, will again find that Black youth are disproportionately tried as if they were adults. And no study will find its use helps the state or its youth.

SB853 makes important first steps to ensure that Maryland adopts best practices that have been established over the past 15 years. These reforms will ensure that as many children as possible are treated with community based services that lead to better public safety outcomes at a fraction of the cost of deep end interventions. If done intentionally, there is the opportunity to also reduce the pervasive racial disparities that persist in Maryland. Finally, it will ready the system to expand what services they are also offering to the young people that Maryland has discarded in the adult criminal justice system. Now is the time to address these reforms.

¹² Vera Institute of Justice (2020, Dec. 10). Preliminary Findings: Youth Charged as Adults in Maryland. Online: <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>