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Testimony from:

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In SUPPORT of SB 165

January 27, 2022

Senate Judicial Proceedings Committee

Chairman Smith, Vice Chairman Waldstreicher and Honorable Members of the Committee,

R Street Institute (RSI) is a nonprofit, nonpartisan public policy research organization focused on advancing limited government and effective free-market policy at the state and federal level. As part of this mission, the Criminal Justice and Civil Liberties team at RSI evaluates policies related to the justice system, and proposes changes to law that would improve outcomes for criminal justice stakeholders and the public. Because SB 165 would align Maryland with research that demonstrates better outcomes for youth and enhanced public safety, RSI encourages its **favorable report**.

SB 165 would end the direct-file provisions under Maryland law that automatically place an inordinate number of youth in the adult criminal court system. From the time of the initial charging decision, youth under 18 years old, and as young as 14, are automatically subject to adult criminal prosecution if they are charged with any one of 33 offenses.¹ Although youth have an opportunity to argue in “waiver hearings” that their cases should transfer back to the juvenile court, the burden of proof is on the youth to show they can be rehabilitated in the Department of Juvenile Services.²

Senate Bill 165 would change the current law by establishing that all children under the age of 18 begin their cases in the juvenile courts. In doing so, SB 165 would not preclude prosecuting youth as adults, as prosecutors still would retain the right to seek a waiver to the adult system, considering the nature of the offense, the youth’s maturity and capacity for rehabilitation, and the need to protect the public. Hence, if SB 165 was enacted, it would merely shift the burden of proof to the prosecution to show that the juvenile system is inadequate to treat a youth and protect the public.

Placing the burden of proof on the prosecutor, rather than the defendant, would align with the right to due process.³ It also would bring Maryland in line with other states, such as Kansas, that presume that young people should be given the benefit of having their cases heard in the juvenile courts and a meaningful opportunity for rehabilitation, unless proven otherwise.⁴ As it stands, Maryland is an outlier



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among the states in its adult-charging practices, ranking second only to Alabama in the per capita number of youth that it automatically sends to adult criminal court.⁵

Rather than automatically shunting children into the adult system, SB 165 would ensure every option for rehabilitation in the juvenile system is used before moving to the adult criminal courts. This would be a boon to youth rehabilitation and public safety, and prevent the needless waste of resources.

Unlike the adult criminal justice system, Maryland's juvenile justice system preserves family connections that protect against future criminality and provides youth with the rehabilitative services needed to reenter society as productive adults.⁶ While juvenile court records are sealed upon a youth reaching the age of 21, youth convicted as adults face the life-long stigma and negative collateral consequences of a criminal conviction, which foreclose critical opportunities for education, housing and employment. Keeping youth in the juvenile system helps to improve public safety and reduce recidivism by providing youth with rehabilitative services, preventing youth from learning criminal behaviors through contact with adult inmates, and removing negative collateral consequences that flow from adult criminal convictions and prevent successful reentry.⁷

More than a decade ago, the U.S. Department of Justice found, "[r]esearch provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism."⁸ The Centers for Disease Control and Prevention likewise found, "[t]ransfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth," and therefore recommended "[a]gainst laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence."⁹ Maryland's antiquated system of automatically charging youth as adults demands reform because it is wholly out of step with prevailing research and best practices, and ultimately undermines public safety.

Moreover, Maryland's automatic adult charging system is grossly wasteful and inefficient. The majority of youth automatically charged as adults end up transferred back to the juvenile court system.¹⁰ In total, more than 80 percent of youth charged as adults are transferred back to the juvenile courts, found not guilty or sentenced to time served—obviating the utility and validity of operating under a presumption that youth charged with certain offenses automatically should be prosecuted in adult criminal courts.¹¹ Rather than wasting the time and resources of prosecutors in pointless waiver hearings, SB 165 would allow prosecutors instead to focus on prosecuting and securing adult criminal convictions in cases where young offenders present a true threat to public safety and security.

In recent years, the Maryland General Assembly has received well-deserved recognition for its holistic analysis and corrective action, such as the 2017 Justice Reinvestment Act, and has worked to undo the impact of decades-old ineffective policies that over-criminalized individuals and harmed public safety.¹² The continued practice of automatically charging youth as adults contradicts the legislature's otherwise-positive efforts toward implementing reforms that lead to better outcomes for youth and the public. It is long past time for policymakers to change Maryland law on automatic adult charging. For these reasons,



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R Street Institute thanks the members of this Committee for their consideration and urges a favorable report on SB 165.

Respectfully submitted,

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¹ Hannah Gaskill, "Reform Council Recommends Ending Policy of Automatically Charging Some Youth as Adults," *Maryland Matters*, Sept. 9, 2021. <https://www.marylandmatters.org/2021/09/09/reform-council-recommends-ending-policy-of-automatically-charging-some-youth-as-adults/#:~:text=In%20Maryland%2C%20kids%20age%2014,to%20commit%20first%2Ddegree%20murder.>

² Office of Juvenile Justice and Delinquency Prevention, "Maryland's Transfer Laws," U.S. Department of Justice, last accessed Jan. 25, 2022. <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/tryingjuvasadult/states/md.html>.

³ Legal Information Institute, "Due Process," Cornell Law School, last accessed Jan. 25, 2022. https://www.law.cornell.edu/wex/due_process.

⁴ *Juvenile Crime and Consequences in Kansas*. Kansas Legal Services, Inc., September 2011. <https://www.kansaslegalservices.org/sites/kansaslegalservices.org/files/Collateral%20Consequences%20Booklet%20-%20Final.pdf>.

⁵ Hannah Gaskill, "Amid Juvenile Justice Reform Push, Commission Examines Maryland's High Rate of Trying Young People as Adults," *Maryland Matters*, July 21, 2021. <https://www.marylandmatters.org/2021/07/21/amid-juvenile-justice-reform-push-commission-examines-marylands-high-rate-of-trying-young-people-as-adults>.

⁶ Victor Cullen Center, Maryland Department of Juvenile Services, last accessed Jan. 25, 2022. <https://djs.maryland.gov/Pages/facilities/Victor-Cullen-Center.aspx>.

⁷ Shari Miller-Johnson and Joel Rosch, "Juvenile or Adult Court: Research on Future Offending," Center for Child and Family Policy, Duke University, last accessed Jan. 25, 2022. https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_ncfis03c04.pdf; David Myers, "The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias," University of New Haven, 2003. <https://digitalcommons.newhaven.edu/cgi/viewcontent.cgi?article=1032&context=criminaljustice-facpubs#:~:text=A%20comparison%20of%20the%20waived,those%20retained%20in%20juvenile%20court>.

⁸ Richard E. Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" U.S. Department of Justice, Office of Juvenile Justice And Delinquency Prevention, *Juvenile Justice Bulletin*, June 2010. <https://www.ojp.gov/pdffiles1/ojjdp/220595.pdf>.

⁹ Robert Hahn, et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. A Report on Recommendations of the Task Force on Community Preventive Services,"



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¹⁰ Department of Juvenile Justices, *Final Report*, Maryland Juvenile Justice Reform Council, January 2021.

<https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024900/024904/20210048e.pdf>.

¹¹ Amanda Engel, "In Focus: A meeting to end 'direct file' in Maryland, and improve public safety," WMAR News Baltimore, July 20, 2021. <https://www.wmar2news.com/infocus/in-focus-a-meeting-to-end-direct-file-in-maryland-and-improve-public-safety>.

¹² "Governor Larry Hogan Announces Implementation of Justice Reinvestment Act," Governor's Office of Crime Prevention, Youth, and Victim Services, Oct. 3, 2017. <http://goccp.maryland.gov/governor-larry-hogan-announces-implementation-justice-reinvestment-act>.