



February 28, 2022

The Honorable William Smith, Chairman
Maryland Senate Judicial Proceedings Committee
Miller Senate Office Building
11 Bladen St.
Annapolis, MD 21401

Dear Chairman Smith and members of the Senate Judicial Proceedings Committee,

I write on behalf of the National Association of Criminal Defense Lawyers (NACDL) to express support for policies that protect the due process rights of youth (SB 53), and end the practice of automatically charging youth in adult criminal court (SB 165). NACDL supports the notion that juveniles are different than adults, and therefore should be treated as such. NACDL encourages legislators to promote policies that consider a child's family history and brain development when considering legislation that could have profound implications on a child's future. For these reasons, NACDL urges the Committee to release SB 53 and SB 165 favorably.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. NACDL's nearly 10,000 members (40,000 with state affiliate members) include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system. Critical to this mission are NACDL's efforts to identify and reform flaws and inequities in the criminal legal system, and specifically address systemic racism and its impact on the administration of justice.

The juvenile justice system is typically focused on rehabilitation and provides more support and opportunities compared to the adult system. Substantial research has concluded that youth who enter the juvenile system are far less likely to recidivate than those tried as adults. Further, policies that treat youth as adults disproportionately affect children of color. Maryland is in desperate need of reform on this issue, as the state is ranked among the worst in the country when it comes to protecting the rights of youth in the US criminal legal system.¹

Amending Maryland's policies regarding juvenile court authority are in the best interest of public safety and promote the health and wellbeing of our youth later in adulthood. There is no evidence to suggest that automatically sending certain children to adult court improves public safety. Jurisdictions with higher rates of adult court transfers for violent crimes committed by juveniles do not see a decrease in crime rates.² In fact, youth who are prosecuted as adults are more likely to recidivate than those prosecuted as

¹ 2020 State Ratings Report: Human Rights Protections for Children in the U.S. Justice System, *Human Rights for Kids*, 2020. https://humanrightsforkids.org/wp-content/uploads/State-Ratings-Report_2020.pdf

² The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety, *Justice Policy Institute* and *The Campaign for Youth Justice*, June 2020. http://www.campaignforyouthjustice.org/images/child_not_the_charge_report_1.pdf



youth and are also more likely to commit more serious offenses, more quickly, according to a review of relevant literature by the US Center for Disease Control and Prevention. Simply going through criminal court proceedings, even absent a criminal sentence, can increase recidivism as well.³

In addition to increasing recidivism, being exposed to the criminal legal system is shown to have detrimental effects on youth later in life. Data from the *Pediatrics* journal found that “cumulative incarceration duration during adolescence and early adulthood is independently associated with worse physical and mental health later in adulthood.”⁴

Further, research shows that nationwide, children of color are disproportionately represented “at nearly all contact points on the juvenile justice system continuum.”⁵ Although there has been a drop⁶ in national arrest rates, black youth are still four times as likely to be “detained or committed” as white youth.⁷ In Maryland in 2018, black individuals comprised over 70 percent of the prison population, while only making up about 30 percent of the state’s total population. Young black men in Maryland are incarcerated at the highest rate in the country, which is more than double the national average.⁸ This is only part of the reason why the enactment of these bills is so desperately needed – not just to protect our youth – but to address stark racial disparities in Maryland’s criminal legal system.

Not only are youth of color disproportionately represented in the juvenile justice system, but they are also more likely to be automatically transferred to adult court compared to white children. According to a study conducted by the Cook County Public Defender’s Juvenile Transfer Advocacy Unit, essentially all youth automatically transferred to adult court in Cook County during a one-year period were minorities – only one, out of 393, was white. Of that group, nearly two-thirds were not offered any juvenile rehabilitation services before being transferred to adult court.⁹

Protecting the due process rights of children is also an essential component of this reform package and emphasizes the notion that adolescent brain development must be considered within the legal system. Just as adults are provided with constitutionally protected Miranda rights, those same protections must be offered to youth, with even greater safeguards. Nine out of every ten children waive their Miranda

³ Automatic Adult Prosecution of Children in Cook County, Illinois. 2010-2012, *Juvenile Justice Initiative*, April 2014.

<https://ijustice.org/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf>

⁴ Barnert, Elizabeth S et al. “How Does Incarcerating Young People Affect Their Adult Health Outcomes?.” *Pediatrics* vol. 139,2 (2017): e20162624. doi:10.1542/peds.2016-2624

⁵ OJJDP (2012). In Focus: Disproportionate Minority Contact, Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Retrieved from <http://www.ojjdp.gov/pubs/239457.pdf>

⁶ OJJDP Statistical Briefing Book (2020). Online.

http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05218&selOffenses=35.

⁷ Black Disparities in Youth Incarceration *The Sentencing Project*, 2021. <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>

⁸ 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-youngadults-in-maryland/>

⁹ Ishida, K., Clarke, E., & Reed, D., (2014) Automatic Adult Prosecution of Children in Cook County, 2010-2012,

<https://ijustice.org/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf>



rights, and research shows that this is often because they feel the need to comply with authority, or because they simply do not understand what their rights are and don't want to admit it.¹⁰ For these reasons, it is critical to protect our youth from the collateral consequences that result from this lack of understanding and failure to exercise their rights.

Maryland has some of the harshest policies on the books when it comes to treating juvenile offenders as adults, even though research consistently shows that adolescent brains are still developing well into an individual's twenties. Children and adults are inherently different, not just due to age, but with regard to their ability to exercise judgement, assess risk, and control impulses. It's time that Maryland's criminal legal system treats children as just that, children. For these reasons, NACDL strongly urges members of this committee to issue a favorable report on juvenile justice reform bills SB 53 and SB 165.

Sincerely,

Monica L. Reid, Senior Director of Advocacy
National Association of Criminal Defense Lawyers

¹⁰ Cleary, H. M.D., Vidal, S. Miranda in Action Juvenile Interrogations: Delivery, Waiver, and Readability. *Criminal Justice Review*, 2016. <https://drkavanaugh.com/wp-content/uploads/2016/11/Criminal-Justice-Review-2016-Cleary-Vidal-1.pdf>