

# Youth Charged as Adults: The Use and Outcomes of Transfer in Baltimore City

Jason R. Tashea

Al Passarella

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/rrgc>



Part of the [Criminal Procedure Commons](#), and the [Juveniles Commons](#)

---

## Recommended Citation

Jason R. Tashea, & Al Passarella, *Youth Charged as Adults: The Use and Outcomes of Transfer in Baltimore City*, 14 U. Md. L.J. Race Relig. Gender & Class 273 (2015).

Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol14/iss2/4>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in University of Maryland Law Journal of Race, Religion, Gender and Class by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

## **YOUTH CHARGED AS ADULTS: THE USE AND OUTCOMES OF TRANSFER IN BALTIMORE CITY**

Jason R. Tashea\* & Al Passarella\*\*

In Maryland, it is legal for youth – as young as fourteen years old – to be charged and prosecuted as an adult. Adult criminal court jurisdiction over youth was born out of the “tough on crime” movement of the 1980s and 1990s.<sup>1</sup> This policy aimed to deter youth from committing certain crimes and seriously punish those who were not deterred, by imposing the “automatic charging” of youth under adult criminal court jurisdiction for certain offenses.<sup>2</sup> The concept was embodied in the slogan, “Adult Time for Adult Crime.”<sup>3</sup>

However, over the past fifteen years, evidence shows that the prosecution of youth as adults through automatic charging laws has not acted as a deterrent,<sup>4</sup> fostered rehabilitation,<sup>5</sup> or decreased

---

\* Jason R. Tashea is the co-founder of the National Expungement Project. He was previously the Juvenile Justice Policy Director at Advocates for Children and Youth in Baltimore, Maryland. Jason was also a Fulbright Fellow studying juvenile justice in the Republic of Kosovo from 2012-2013. He received his J.D. from the University Of Oregon School Of Law.

\*\* Al Passarella is Director of Data Analysis for Baltimore’s Promise. He was previously Research Director at Advocates for Children and Youth. He received his Masters in Public Administration from School of Public Affairs and Administration at Rutgers University-Newark. Both authors would like to thank Judge Kershaw at the Baltimore City Juvenile Court, the Open Society Institute-Baltimore, Nonso Umunna and Angela Johnese for their hard work and support on this project.

<sup>1</sup> Wendy Hess, Laura Furr, Kimberly Armstrong, Susan Francis & Amanda White, *A Report of the Just Kids Partnership to End the Automatic Prosecution of Youth as Adults*, JUST KIDS: BALTIMORE’S YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM 2 (Oct. 2010), <http://justkidsmaryland.org/wp-content/uploads/2014/06/Just-Kids-Report.pdf>.

<sup>2</sup> *Id.* at 11.

<sup>3</sup> *Id.*

<sup>4</sup> DAVID L. MYERS, EXCLUDING VIOLENT YOUTHS FROM JUVENILE COURT: THE EFFECTIVENESS OF LEGISLATIVE WAIVER 52 (2001) (Challenging whether or not harsher adult sentencing for violent juveniles is effective); Richard E. Redding, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? 2 (2010).

<sup>5</sup> DONNA M. BISHOP & CHARLES FRAZIER, CONSEQUENCES OF TRANSFER 227–76 (Jeffrey Fagan & Franklin E Zimring eds., 2001) (Explaining that juvenile facilities offer more treatment and reintegration options which leave youth feeling that staff and services are in place to help youth and facilitate positive transition in society as opposed to the criminal justice system); David L. Myers, *Adult Crime, Adult Time: Punishing Violent Youth in the Adult Criminal Justice System*, YOUTH VIOLENCE AND JUVENILE JUSTICE 175 (April 2003).

recidivism,<sup>6</sup> and these laws put youth at greater risk of abuse while in prison.<sup>7</sup> These harms are occurring in Maryland, and it is disproportionately hurting African-American youth.<sup>8</sup>

A 2010 study of Baltimore City's use of automatic charging of youth within the adult system showed that only 10 percent of youth charged as adults were ever actually sentenced to the adult prison system.<sup>9</sup> Conversely, 68 percent of youth had their cases dismissed or

---

<sup>6</sup> See Gordon Bazemore & Mark Umbreit, *Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime*, 41 CRIME & DELINQUENCY 296, 299–300 (1995) (One reason juveniles tried as adults face higher recidivism rates is that the adult system has a decreased focus on rehabilitation and family support); Lawrence Winner, Lonn Lanza-Kaduce, Donna M. Bishop & Charles E. Frazier, *The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term*, 43 CRIME & DELINQUENCY 548, 549 (1997) (Reoffending was more likely if a juvenile was transferred to an adult court than if prosecuted in a juvenile court); Jeffrey Fagan, *The Comparative Advantage of Juvenile Versus Criminal Sanctions Among Adolescent Offenders*, 18 LAW & POL'Y 77, 98 (1996) (Arguing that juveniles charged as adults are more likely to reoffend as opposed to those charged as juveniles); Lonn Lanza-Kaduce et al., *Juvenile Offenders and Adult Felony Recidivism: The Impact of Transfer*, 28 J. OF CRIME AND JUSTICE 59 (2005) (Concluding that 49% of transferred youth from the previous studies reoffended, compared with 35% of youth retained in juvenile court); CRAIG A. MASON & SHAU CHANG, JUVENILE SENTENCING ADVOCACY PROJECT, MIAMI-DADE COUNTY PUBLIC DEFENDER'S OFFICE, RE-ARREST RATES AMONG YOUTH SENTENCED IN ADULT COURT 1, 7–8 (2001) (Juveniles who received juvenile sanctions in an adult court were less likely to reoffend than those who received adult sanctions); David L. Myers, *The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias*, 1 YOUTH VIOLENCE & JUVENILE JUSTICE 79, 90, 94 (2003) (Showing higher likelihood of recidivism amongst juvenile's charged as adults as opposed to juveniles prosecuted in the juvenile justice system); Donna M. Bishop, Charles E. Frazier, Lonn Lanza-Kaduce & Lawrence Winner, *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?*, 42 CRIME & DELINQUENCY 171, 183 (1996) (Florida study showing that youths charged as adults were more likely to recommit and to recommit more often).

<sup>7</sup> MARTY BEYER, THOMAS GRISSO & MALCOLM YOUNG, MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE 18 (2002); CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 4 (2007).

<sup>8</sup> PARRIS N GLENDENING, KATHLEEN KENNEDY TOWNSEND & BISHOP L. ROBINSON, FINAL REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY COMMISSION ON JUVENILE JUSTICE JURISDICTION 35 (2001).

<sup>9</sup> Hess et al., *supra* note 1, at 10.

waived back into the juvenile court system.<sup>10</sup> What the 2010 study did not elucidate, though, was what happened once those youth were waived back into the juvenile system – a procedure referred to herein as “reverse waiver.”

This Article shares the findings of a new study we undertook, picking up where the 2010 study left off. Through a generous grant from the Open Society Institute-Baltimore, Advocates for Children and Youth secured access to the court records of all youth granted reverse waiver between January 2009 and December 2011 in Baltimore City.

To assess the value of Baltimore’s automatic charging regime, which ultimately grants reverse waiver to so many juveniles, the analysis herein seeks to understand this practice and its outcomes. Who are the youth receiving reverse waiver? What previous criminal court system contact did these youth have? And, perhaps most importantly, what are their ultimate adjudicatory and dispositional outcomes?

First, we discuss the history and use of automatic charging and reverse waiver in Maryland. Second, we outline the scope, methodology, and relevant definitions of our study. To close, we will discuss the findings of our study, the conclusions that can be made, and offer recommendations.

## I. AUTOMATIC CHARGING AND REVERSE WAIVER IN MARYLAND

Maryland allows for the automatic adult charging of youth as young as fourteen years old.<sup>11</sup> If a juvenile fourteen years of age or older is charged with an excluded offense,<sup>12</sup> regardless of their criminal or personal history, they are automatically processed in the adult criminal justice system.<sup>13</sup> An excluded offense is a crime that, when charged, automatically excludes the youth from juvenile court jurisdiction and puts them in adult court jurisdiction.<sup>14</sup> One form of

---

<sup>10</sup> *Id.* at 8.

<sup>11</sup> MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03(d) (2013).

<sup>12</sup> *See infra* p. 8.

<sup>13</sup> CTS. & JUD. PROC. § 3-8A-03(d).

<sup>14</sup> Hess et al., *supra* note 1, at 6.

recourse for a juvenile is to file a motion to transfer the case to juvenile court.<sup>15</sup> Before delving into the study itself, this Article provides historical context for the creation and evolution of the law. This will be followed by an in-depth discussion about the current legal regime that regulates automatic charging in Maryland.

#### A. *The History of Automatic Charging in Maryland*

Charging juveniles as adults in Maryland evolved from a largely limited option to one in which thirty-three offenses result in automatic adult court jurisdiction.<sup>16</sup>

Since the passage of the Act to Establish a House of Refuge for Juvenile Delinquents in 1830, Maryland has had an iteration of a juvenile justice system separate from the adult criminal justice system.<sup>17</sup> In 1902, the General Assembly established a special court to hear cases of all youth under the age of sixteen called the Magistrate for Juvenile Cause.<sup>18</sup> In 1943, the General Assembly abolished the Magistrate, conferring jurisdiction in all juvenile matters to the Supreme Bench for Baltimore City.<sup>19</sup> Two years later, another round of changes placed all juvenile matters before the circuit court in each jurisdiction.<sup>20</sup>

The charging of youth as adults was primarily an informal process handled at the discretion of the juvenile court judge using state legislative guidelines,<sup>21</sup> with youth being charged in adult court infrequently.<sup>22</sup> A legal watershed moment for youth in adult criminal court jurisdiction occurred with *Kent v. United States* in 1966.<sup>23</sup> In

---

<sup>15</sup> MD. CODE ANN., CRIM. PRO. ART. § 4-202(b) (2013).

<sup>16</sup> Hess et al., *supra* note 1, at 6.

<sup>17</sup> GLENDENING ET AL., *supra* note 8, at 18.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> CINDY J. SMITH, KIMBERLY S. CRAIG, KATHLEEN BLOCK, ANGELA PATRICK & AMY HALL, *National Institute of Justice, MARYLAND DEPARTMENT OF JUVENILE JUSTICE PARTNERSHIP TO STUDY WAIVER EFFECTS: A FINAL REPORT 2* (Aug. 2001).

<sup>23</sup> 383 U.S. 541 (1965); DAVID L. MYERS, *EXCLUDING VIOLENT YOUTHS FROM JUVENILE COURT: THE EFFECTIVENESS OF LEGISLATIVE WAIVER 16* (LFB Scholarly Publishing LLC, 2001).

*Kent*, the Supreme Court provided a list of factors that judges could consider in deciding to try a youth as an adult, including: severity of the offense, criminal history, premeditation, and public safety.<sup>24</sup> *Kent* laid the foundation for taking juvenile proceedings from largely informal processes to the adversarial proceedings of the adult justice system by affording judges the latitude to sentence youth as adults.<sup>25</sup>

In the decades after *Kent*, attitudes on crime and punishment for youth offenders became more punitive.<sup>26</sup> Prosecuting juveniles as adults was initially intended for severe charges such as rape and murder, but now, as the list of excluded offenses has grown, lesser charges that had been reserved for the more rehabilitative-focused juvenile system were moved to adult jurisdiction.<sup>27</sup> This trend coincided with spikes in crime in the 1970s and 1980s that begot the “tough on crime” movement of the late 1980s and early 1990s,<sup>28</sup> an attempt to address the historically anomalous spike in crime with harsh, punitive measures aimed at restoring “order and justice” to urban America.<sup>29</sup>

While the results of these measures would later prove to be both costly and ineffective, national attitudes towards youth offenders hardened.<sup>30</sup> A 1998 study commissioned by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) showed that from 1992 to 1995, 80 percent of states enacted laws formalizing criteria for youth to be charged as adults, and by 1997, all states had laws

---

<sup>24</sup> *Kent*, 383 U.S. at 566–67.

<sup>25</sup> SMITH ET AL., *supra* note 22, at 3; Nimick, Szymanski & Synder, *Juvenile Court Waiver: A Study of Juvenile Court Cases Transferred to Criminal Court*, U.S. DEP’T. OF JUSTICE, 1 (1986), available at [http://www.ncjj.org/pdf/Nimick\\_Juvenile.pdf](http://www.ncjj.org/pdf/Nimick_Juvenile.pdf).

<sup>26</sup> PATRICK GRIFFIN, SEAN ADDIE, BENJAMIN ADAMS & KATHY FIRESTONE, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 2 (U.S. Dep’t. of Justice, Office of Juvenile Justice and Delinquency Prevention, Sept. 2011).

<sup>27</sup> SMITH ET AL., *supra* note 22, at 3.

<sup>28</sup> MARC MAUER, RACE TO INCARCERATE 55 (The New Press, 2006).

<sup>29</sup> *Id.*

<sup>30</sup> GLENDENING ET AL., *supra* note 8, at 18; Franklin E. Zimring, *The Youth Violence Epidemic: Myth or Reality*, 33 WAKE FOREST L. REV. 727, 727–28 (1998); SMITH ET AL., *supra* note 22, at 3.

allowing prosecution of youths as adults.<sup>31</sup> As a result, states began to move in one of three directions regarding youth who were perceived as beyond the capacity of the juvenile justice system: (1) make the juvenile system more like the adult system; (2) create a middle category such as youthful offender programs that authorize the adult criminal system to sentence offenders but suspend sentencing upon successful completion of youth-focused programming; or (3) use the adult criminal justice system for some youth offenders.<sup>32</sup> Within this framework, Maryland opted to pursue the third direction: punitive measures through the adult criminal justice system as a way of immediately pacifying the outcry for punishment of these allegedly hardened youth offenders.<sup>33</sup>

The momentum behind this approach can be connected to several high-profile offenses committed by youth in affluent Maryland jurisdictions.<sup>34</sup> In addition to these high profile juvenile cases, the 1994 legislative elections shifted the discussion toward the “tough on crime” approach, specifically with regard to juvenile delinquency.<sup>35</sup> During this period, the Maryland legislature saw increased pressure from its electorate to amend automatic charging legislation to encompass more punitive measures for certain juvenile offenses.<sup>36</sup>

Under the backdrop of these pressures, two major changes were enacted regarding juvenile transfer to the adult system. The first

---

<sup>31</sup>Shay Bilchik, *Foreword* to JANET RENO, RAYMOND C. FISHER, LAURIE ROBINSON, & SHAY BILCHIK, U.S. DEPARTMENT OF JUSTICE, TRYING JUVENILES AS ADULTS IN CRIMINAL COURT: AN ANALYSIS OF STATE TRANSFER PROVISIONS, at iii, 1 (1998).

<sup>32</sup> GLENDENING ET AL., *supra* note 8, at 30.

<sup>33</sup> SMITH ET AL., *supra* note 22, at 3.

<sup>34</sup> SMITH ET AL., *supra* note 22. Two instances of particular note that caused public outcry regarding juvenile offenders were the case of Samuel Sheinbein and a rise in juvenile robberies of athletic apparel in affluent Howard County during the early to mid-1990's. Oren M. Chaplin, *American Justice Across the Ocean? The Case of Samuel Sheinbein* 35 NEW ENG. L. REV. 4, 967–1002 (2001); Alan Carver, *Howard gets tough on Starter jacket thefts Prosecutors will take suspected delinquents to court*, BALTIMORE SUN, Mar. 10, 1993, available at [http://articles.baltimoresun.com/1993-03-10/news/1993069058\\_1\\_jackets-juvenile-services-department-of-juvenile](http://articles.baltimoresun.com/1993-03-10/news/1993069058_1_jackets-juvenile-services-department-of-juvenile).

<sup>35</sup>Eric Fritsch & Craig Hemmens, *Juvenile Waiver in the United States 1979-1995: A Comparison and Analysis of State Waiver Statutes*, 46 JUV. & FAM. CT. J. 3, 17–35 (1995).

<sup>36</sup> *Id.* at 17.

occurred during the 1994 Maryland General Assembly when the legislature limited the jurisdiction of the juvenile courts by adding a number of offenses that, if committed by a youth 16 or older, would result in adult court jurisdiction.<sup>37</sup> The law was then amended in 1995 to include attempted robbery with a deadly or dangerous weapon and revised again in 1996 to include assault in the first degree to the list of offenses eligible for adult jurisdiction.<sup>38</sup>

The second major change occurred in 1998 with the passage of the “once waived, always waived” statute,<sup>39</sup> which ensured that a youth with an adult felony conviction would be tried as an adult for any subsequent excluded offenses.<sup>40</sup>

Strong opposition to these changes, led primarily by the American Bar Association, sought to protect youth thought to be too vulnerable for the more punitive adult system.<sup>41</sup> This conflict between advocates and a tough-on-crime legislature led to the 1998 General Assembly passing Senate Bill 68, which established the Commission on Juvenile Justice Jurisdiction.<sup>42</sup> Tasked with analyzing the effects of the changes in juvenile court jurisdiction, the Commission would serve as a compromise between these competing interests.<sup>43</sup> The result was negligible; the Commission arguably halted any additional legislation on the subject until enough data was collected to analyze the effectiveness, or lack thereof, of automatic charging.<sup>44</sup>

---

<sup>37</sup> GLENDENING ET AL., *supra* note 8, at 23 (These offenses included abduction, kidnapping, second-degree murder, manslaughter, mayhem or maiming, second-degree rape, second-degree sexual offense, third-degree sexual offense, a series of non-violent gun offenses, carjacking, assault with intent to murder or rape or rob or commit a sexual offense).

<sup>38</sup> *Id.* at 25.

<sup>39</sup> MD. CODE CRIM. PROC. § 4-202 (2001). This provision was overturned during the 2014 General Assembly session by Senate Bill 515. Effective October 1, 2014, youth previously charged as an adult are able to file for reverse waiver.

<sup>40</sup> MD. CODE CTS. & JUD. PROC. § 3-8A-03(d)(5).

<sup>41</sup> SMITH ET AL., *supra* note 22.

<sup>42</sup> Juvenile Justice Act, S.B. 68, 1998 Reg. Sess. (Md. 1998).

<sup>43</sup> SMITH ET AL., *supra* note 22, at 3.

<sup>44</sup> GLENDENING ET AL., *supra* note 8, at 54.

More recently, a new Task Force was created in 2013.<sup>45</sup> While still desiring more data, the 2013 Task Force agreed that all youth should have the opportunity to petition for waiver to juvenile jurisdiction.<sup>46</sup> During the 2014 General Assembly, both of the 2013 Task Force's recommendations passed in some rendition. The recommendation to collect better data was embodied in House Bill 589, and requires the Governor's Office of Crime Control and Prevention to collect relevant data for the subsequent three years.<sup>47</sup> Senate Bill 515 ended the "one and done" exception to reverse waiver, allowing youth previously charged as an adult to still file for reverse waiver unless precluded by other parts of the statute.<sup>48</sup> Those preclusions applied if the youth was previously found guilty of an excluded offense or if the youth was 16 or 17 years old during the alleged commission of murder in the first degree. Senate Bill 515 was the first rollback of automatic charging in Maryland since the expansion of adult court jurisdiction in the 1990s.

### *B. Current Law Controlling Automatic Charging in Maryland*

Today, there are thirty-three enumerated offenses that automatically impute adult court jurisdiction for juveniles in Maryland.<sup>49</sup> Of these offenses, there are twenty-seven felonies and six misdemeanors.<sup>50</sup> Depending on the statutory classification, the minimum age at which adult jurisdiction begins can vary.<sup>51</sup>

A juvenile of statutory age charged with committing one of these crimes will be excluded, at least initially, from juvenile court jurisdiction.<sup>52</sup> Once in the adult system, a juvenile can file for reverse

---

<sup>45</sup> TAMMY BROWN, GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION, REPORT OF THE TASK FORCE ON JUVENILE COURT JURISDICTION 3 (2013).

<sup>46</sup> *Id.* at 5.

<sup>47</sup> H.R. 589, 2014 Reg. Sess. (Md. 2014).

<sup>48</sup> S.B. 515, 2014 Reg. Sess. (Md. 2014).

<sup>49</sup> MD. CODE ANN., CTS. AND JUD. PROC., § 3-8A-03.

<sup>50</sup> See chart below for breakdown of offenses. *See also* MD. CODE ANN., CTS. AND JUD. PROC., § 3-8A-03 (2013).

<sup>51</sup> For example, second-degree murder committed at 14 does not trigger automatic charging, but the same offense committed at 16 immediately places a juvenile under adult court jurisdiction.

<sup>52</sup> CTS. AND JUD. PROC., § 3-8A-03.

waiver unless prohibited by the statute,<sup>53</sup> which, if successful, transfers the case from adult to juvenile court jurisdiction.<sup>54</sup>

Category	Age	Offense
Capital <sup>55</sup>	14	Crime punishable by death <sup>56</sup> or life imprisonment.
Murder <sup>57</sup>	16	Second-degree murder or the attempt; manslaughter.
Person <sup>58</sup>	16	Abduction; kidnapping; first-degree assault; armed robbery or the attempt; second degree rape; second and third-degree sexual offenses in violation of specified statutes; <sup>59</sup> attempted rape; attempted second-degree sexual assault; carjacking; or, armed carjacking.
Weapon <sup>60</sup>	16	Felonies: Using, wearing, carrying, or transporting firearms during and in relation to a drug trafficking crime; felon in possession of a handgun; limits on possession; <sup>61</sup> or, the perpetration or attempted perpetration of a crime of violence.
		Misdemeanors: Limits on gun sales; <sup>62</sup> possessing or using a machine gun for aggressive purposes; possessing a short-barreled rifle or shotgun; use of a firearm during the commission of a violent crime; wearing, carrying, or transporting a handgun; or, possessing, selling, transferring, or otherwise disposing of a stolen regulated firearm.

<sup>53</sup> Youth are not eligible for reverse waiver if they have previously been found guilty of an excluded offense or were 16 or 17 years-old during the alleged commission of first-degree murder. (MD. CRIMINAL PROCEDURE, § 4-202 (2012)).

<sup>54</sup> MD. CRIM. PROC., § 4-202.

<sup>55</sup> CTS. AND JUD. PROC., § 3-8A-03.

<sup>56</sup> The statute, at the time of writing, did not reflect the abolition of Maryland's death penalty in 2013.

<sup>57</sup> CTS. AND JUD. PROC., § 3-8A-03.

<sup>58</sup> *Id.*

<sup>59</sup> MD. CODE CRIM. LAW § 3-306(a)(1) & 3-307(a)(1) (2013).

<sup>60</sup> CTS. AND JUD. PROC., § 3-8A-03.

<sup>61</sup> *Id.*; MD. CODE PUB. SAFETY, § 5-133 (2013).

<sup>62</sup> MD. CODE PUB. SAFETY, § 5-134 (These limits include, but are not limited to the following: if the dealer sells a gun to someone under 21; has been convicted of a disqualifying crime; is a fugitive from justice; is a habitual drinker or drug addict; or suffers from certain mental disorders).

Generally, reverse waiver should be granted if the juvenile can show the court that juvenile jurisdiction is in the best interest of both the juvenile and society.<sup>63</sup> Various factors are used to determine whether reverse waiver should be granted including, the age of the juvenile, the mental and physical condition of the juvenile, the juvenile's amenability to treatment offered for delinquent youth, the nature of the alleged crime, and public safety.<sup>64</sup>

During the temporal scope of the study underlying this Article, reverse waiver was available to all youth automatically charged in the adult system except under the following circumstances: if the juvenile had been previously transferred to juvenile court and adjudicated as a delinquent; if the juvenile was previously convicted in an unrelated case as an adult; if the juvenile's alleged crime was first-degree murder and they were 16 or 17 years old at the time of the alleged crime's commission.<sup>65</sup> After October 1, 2014, as discussed *supra*, youth previously charged as adults are able to file for reverse waiver unless precluded for another reason.<sup>66</sup> These changes to the reverse waiver process are not reflected in the cases studied for this Article.

The most recent study regarding the use of automatic charging in Maryland was the 2010 Just Kids Partnership report *Baltimore's Youth in the Adult Criminal Justice System* ("Just Kids").<sup>67</sup> The Just Kids report, like this Article, focused on Baltimore City. The Just Kids report found that 68 percent of youth automatically charged as adults found their cases either dismissed or were waived back to the juvenile court system.<sup>68</sup> Of all the cases Just Kids reviewed, only 10 percent were adjudicated by the adult system.<sup>69</sup>

Using this report as our starting point, we now seek to answer the question: what happens to youth in Baltimore City once they are waived from adult court back to juvenile court jurisdiction? The

---

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Hess et al., *supra* note 1.

<sup>68</sup> *Id.* at 2.

<sup>69</sup> *Id.*

findings discussed below build on the Just Kids report to show that automatically charging youth as adults is a broken system in need of change. The following sections provide our methodology, definitions used in this study, the raw findings, and recommendations. First, however, we discuss the harms of the adult system on the youth that end up there.

### *C. Why Does Jurisdiction Matter for Youth Prosecution?*

Over the past decade, knowledge of the harms of charging, trying, and punishing youth as adults has grown extensively.<sup>70</sup> Putting a juvenile through the adult criminal justice system does not lower recidivism and increases the likelihood for youth to be abused, largely because the adult system is not built for youth.

Studies show that putting youth through the adult system, as opposed to the juvenile system, will increase recidivism.<sup>71</sup> For example, in a comparison of youth robbery offenders in New Jersey and New York, in which some were tried in adult court and some were tried in juvenile court, all were found delinquent or guilty and received some sentence.<sup>72</sup> Yet, those who were sentenced in criminal court were 75 percent more likely than those sentenced in juvenile court to be re-arrested.<sup>73</sup> Likewise, in Wisconsin, which charged all 17 year olds as adults, a legislative study found that youth subject to adult jurisdiction reoffended at a rate more than double that of adult offenders.<sup>74</sup> Meanwhile, a 2002 study by the Florida Department of Juvenile Justice found that youth transferred to the adult system were

---

<sup>70</sup> ANNA AIZER & JOSEPH J. DOYLE, JR., *JUVENILE INCARCERATION, HUMAN CAPITAL AND FUTURE CRIME: EVIDENCE FROM RANDOMLY-ASSIGNED JUDGES* 28 (2013); BARRY HOLMAN & JASON ZIEDENBERG, *JUSTICE POLICY INST., THE DANGERS OF DETENTION* 1–10 (2006); JAMES C. HOWELL, *PREVENTING AND REDUCING JUVENILE DELINQUENCY* 16 (2nd ed. 2009); RICHARD A. MENDEL, *THE ANNIE E. CASEY FOUND., NO PLACE FOR KIDS* 5–9 (2011).

<sup>71</sup> AIZER ET AL., *supra* note 70, at 22.

<sup>72</sup> Fagan, *supra* note 6.

<sup>73</sup> *Id.* at 94–95.

<sup>74</sup> KATE WADE, SHELBY MCCULLEY, DAVID HARKINS, ALLISON LA TARTE, MARY REGAN & ROBERT SOMMERFELD, *LEGISLATIVE AUDIT BUREAU, 17-YEAR-OLD OFFENDERS IN THE ADULT CRIMINAL JUSTICE SYSTEM* 62 (2008).

recidivating at a rate of 49.3 percent as compared to youth that stayed in juvenile court who recidivated at 35.4 percent.<sup>75</sup>

Those states are not outliers. Researchers looking at fifteen states found that youth subject to adult jurisdiction are 16 percent more likely to recidivate than adults.<sup>76</sup> These studies concur that a large factor leading to higher recidivism rates amongst youth tried as adults is that they are put in a system that is built for adults instead of the juvenile system that has staffing and programs aimed at helping and rehabilitating youth.<sup>77</sup> The adult system is simply not structured to offer the same support.<sup>78</sup> This lack of institutional support for youth in adult correctional facilities is only perpetuating a cycle of catch and release.<sup>79</sup>

In addition to the connection between adult corrections and increased youth recidivism, youth are at an increased risk for abuse in adult facilities.<sup>80</sup> In the United States, youth make up only 1 percent of the adult inmate population; however, in 2005 youth inmates made up 21 percent of inmate-on-inmate sexual violence.<sup>81</sup> To try to curb abuse, adult corrections facilities move youth to separate or isolated housing, but this causes a deterioration of their physical and mental stability.<sup>82</sup> In fact, youth inmates are 36 times more likely to commit suicide than the adult inmate population.<sup>83</sup>

Staff in adult facilities are also not adequately trained to deal with the unique needs of youth in detention or commitment, which

---

<sup>75</sup> LONN LANZA-KADUCE, CHARLES E. FRAZIER, JODI LANE & DONNA M. BISHOP, FLA. DEP'T OF JUVENILE JUSTICE, JUVENILE TRANSFER TO CRIMINAL COURT STUDY: FINAL REPORT 15 (2002).

<sup>76</sup> JENNIFER L. WOOLARD, CANDICE ODGERS, LONN LANZA-KADUCE & HAYLEY DAGLIS, INT'L JOURNAL OF FORENSIC MENTAL HEALTH, JUVENILES WITHIN ADULT CORRECTIONAL SETTINGS: LEGAL PATHWAYS AND DEVELOPMENT CONSIDERATIONS 7 (2005).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 9.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 13.

<sup>81</sup> CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 4 (2007).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

compounds these problems.<sup>84</sup> While there are services provided to youth in the adult system in Maryland, like education and some drug treatment, the adult system is undeniably more punitive and less suitable than its juvenile counterpart.<sup>85</sup> Adult prisons are poorly equipped to protect or help youth.

It is important to realize that the current automatic charging system is harming our youth and increasing crime in our communities. As shown here, the adult system is not structured to help youth reform, nor is it set up to protect youth from being victims of abuse, or worse, suicide. These harms and finding solutions to them are what motivated us to conduct the research below.

## II. SCOPE, METHODOLOGY AND DEFINITIONS

Before discussing the findings of our reverse waiver study, this section offers the scope, methodology, and definitions employed.

Our study captures cases of youth automatically charged as adults who were subsequently granted reverse waiver back into the juvenile justice system in Baltimore City, Maryland between January 1, 2009 and December 31, 2011. Access to paper court files and the juvenile court's electronic records system, E-Quest, were provided through a 90 day court order granted to Advocates for Children and Youth by the Associate Judge heading the Juvenile Court division of the Baltimore City Courts.<sup>86</sup> The order authorized the full release of court records of all youth charged as adults and subsequently granted reverse waiver into the juvenile system.<sup>87</sup> During the temporal scope of this study, 907 youth were arrested as adults<sup>88</sup> and 255 received reverse waiver to juvenile jurisdiction. All confidential information was redacted in subsequent analysis in accordance with the court order's confidentiality requirements.

---

<sup>84</sup> INTER-AMERICAN COMM'N ON HUMAN RIGHTS, JUVENILE JUSTICE AND HUMAN RIGHTS IN THE AMERICAS xi-xii (2011).

<sup>85</sup> JUST KIDS, *supra* note 4, at 4.

<sup>86</sup> Supplemental Order Regarding Access to Records of the Circuit Court of Baltimore City (2012).

<sup>87</sup> *Id.*

<sup>88</sup> BALTIMORE CITY POLICE DEPARTMENT, JUVENILE ARREST REPORT (2009); BALTIMORE CITY POLICE DEPARTMENT, JUVENILE ARREST REPORT (2010); BALTIMORE CITY POLICE DEPARTMENT, JUVENILE ARREST REPORT (2011).

Within this scope of cases, a convenience sample was used to achieve the most comprehensive review of the data. The intensive nature of a court records review did not allow for the full vetting of all relevant 255 cases; thus 100 cases were selected from an even distribution over the three years this study reviewed. The 100 cases represent 100 percent of all cases reviewed for this study (n=100). Since the sample is not chosen at random, the inherent bias in convenience sampling means that the sample is not necessarily representative of the total population being studied.<sup>89</sup> To put Baltimore City's youth-arrested-as-adults population in state-wide context, Baltimore City is the largest jurisdiction by population of youth held as adults, making up about one-third of the state's total.<sup>90</sup>

Though the internal validity<sup>91</sup> of the study is strong, it should be noted that the present study is limited with regards to the population as a whole – only one jurisdiction was examined. Given this, it is difficult to draw general conclusions about transfer in Maryland. These results are specific to Baltimore City. Subsequent research should attempt to compare other jurisdictions.

For the purposes of this study, the proceeding terms are defined as follows:

*Adjudication:* "Proceeding before a juvenile judge or master to determine the truth of allegations made against a youth."<sup>92</sup> The term "adjudicated" is analogous to "convicted" in the adult system in Maryland and indicates that the court concluded the youth committed the alleged criminal act.<sup>93</sup>

*Community Supervision:* Any of the following community-based detention options available to the court: probation; community detention (CD), community detention with electronic monitoring (CD-EM), community detention with electronic monitoring and global

---

<sup>89</sup> DAVID E. MCNABB, RESEARCH METHODS FOR POLITICAL SCIENCE: QUANTITATIVE AND QUALITATIVE METHODS 126–8 (2004).

<sup>90</sup> GLENDENING ET AL., *supra* note 10.

<sup>91</sup> MCNABB, *supra* note 89, at 167.

<sup>92</sup> MARYLAND DEPARTMENT OF JUVENILE SERVICES, DATA RESOURCE GUIDE FISCAL YEAR 2013 vi (2013), *available at*,

[http://www.djs.state.md.us/drg/Full\\_DRG\\_With\\_Pullouts\\_2013.pdf](http://www.djs.state.md.us/drg/Full_DRG_With_Pullouts_2013.pdf).

<sup>93</sup> *Id.*

position system (CD-EM with GPS), total house arrest, and total house arrest with global position system.

*Disposition:* “The action taken by the juvenile court that outlines whether the youth requires guidance, treatment, or rehabilitation.”<sup>94</sup> This phase of a delinquency proceeding is similar to the sentencing phase of an adult trial in Maryland.<sup>95</sup>

*Drug offenses:* Drug trafficking; drug sales and delivery; drug possession; or other drug offenses such as possession of drug paraphernalia.<sup>96</sup>

*Juvenile or youth:* Individuals 14, 15, 16, or 17 years of age.<sup>97</sup>

*Non-Violent Offense:* Trespassing, burglary, theft (including motor vehicle), malicious destruction or property crimes, or any other crimes involving drugs or property.<sup>98</sup>

*Out-of-Home Placement:* Any sentence resulting in the removal of youth from their home.<sup>99</sup> Examples include staff and hardware secure facilities, residential treatment facilities, or group homes.

*Recidivism:* The act of being rearrested for a crime within one year of disposition either in the adult or juvenile criminal justice system.

*Respondent:* “A youth or juvenile who is alleged to have committed or has committed a delinquent act.”<sup>100</sup>

*Special Needs:* Any juvenile receiving special education services in school or diagnosed with a learning disability.

---

<sup>94</sup> *Id.* at vii.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 213.

<sup>97</sup> MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03 (2013).

<sup>98</sup> These offenses were chosen by the authors for ease of bifurcating violent and non-violent offenses.

<sup>99</sup> MARYLAND DEP’T OF JUVENILE SERVICES *supra* note 94, at viii.

<sup>100</sup> MD. CODE ANN., CRIM. PROC. § 11-101 (2014).

*Violent Offense:*<sup>101</sup> Murder, attempted murder, rape, attempted rape, sexual assault, assault, carjacking, armed robbery, robbery or any other crimes against persons.

### III. DOES THE CRIME FIT THE TIME? FINDINGS AND ANALYSIS

Broadly, we studied the court records of youth that received reverse waiver from the adult to the juvenile court system to determine the effectiveness and outcomes of automatic charging and reverse waiver in Baltimore City.<sup>102</sup> To accomplish this, we first looked to the demographics of the youth receiving reverse waiver. Second, we looked at the previous system contact these youth had. And third, we evaluated the process and outcomes after reverse waiver was granted.

#### A. *Who Are The Youth Receiving Reverse Waiver?*

To understand more about the youth receiving reverse waiver, we looked at the following indicators: race and ethnicity, gender, age, geographic location, educational attainment, and, if the youth required special education or had mental health needs.

Of the 100 cases analyzed, 93 percent were African-American; 4 percent were Hispanic/Latino; and, 3 percent were White. Additionally, 90 percent of respondents were Male and 10 percent were Female. The majority of respondents were 16 or 17 years old (89 percent) with the rest being 14 or 15 years old.

In terms of geographic characteristics, more than one-third of respondents (36 percent) reside in the following three zip-codes in Baltimore City: 21216 (15 percent),<sup>103</sup> 21213 (11 percent),<sup>104</sup> and 21223 (10 percent).<sup>105</sup>

---

<sup>101</sup> This classification of offenses was based on the authors' judgment for the purposes of this study only.

<sup>102</sup> The evidence is limited to Baltimore City generally and specifically to the 100 cases reviewed. Random sampling as opposed to convenience sampling would provide evidence that could be used to generalize across large populations because of the inherent nature of random sampling; it would remove biases based on chance selection. See MCNABB, *supra* note 91, at 127–30.

<sup>103</sup> Zip code 21216 contains the following neighborhoods: Mondawmin, Coppin Heights, Garwyn Oaks, Rosemont, and portions of Sandtown-Winchester. Within zip code 21216, 96.6 percent of residents are African-American. U.S. CENSUS

When examining the educational attainment of all respondents, we found that 50 percent were in grades nine to eleven at the time of their adult arrest. Additionally, 35 percent of respondents' educational information was unavailable to researchers during the study. Meanwhile, roughly one in five respondents (19 percent) received special education<sup>106</sup> services or had a diagnosed learning disability.<sup>107</sup> Notably, the majority of respondents' special needs information was unavailable, so these figures are likely underreported.

---

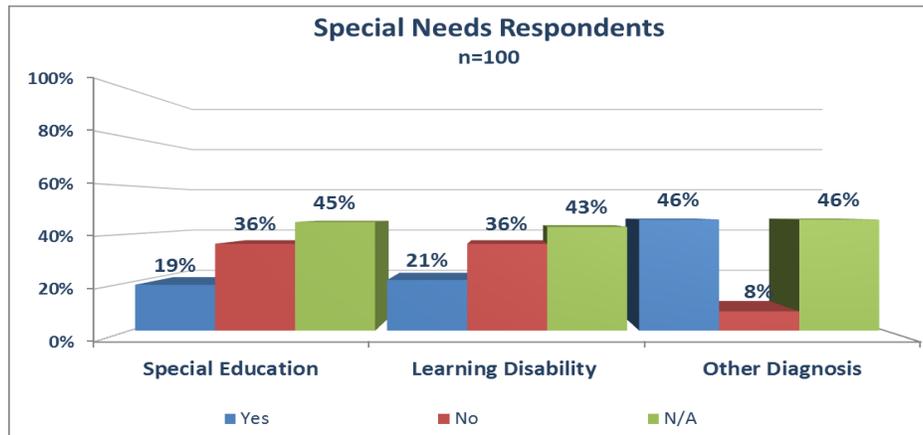
BUREAU, 2010 CENSUS (2010); additionally, 27.4 percent of individuals live below the federal poverty level, including 42.5 percent of individuals under 18 years of age. 10.8 percent of families have annual income of less than \$10,000 annually. The unemployment rate was at 18.2 percent. U.S. CENSUS BUREAU, 2008–2012 AMERICAN COMMUNITY SURVEY (2012).

<sup>104</sup> Zip code 21213 contains the following neighborhoods: Belair-Edison, Oliver, Broadway East, and Clifton Park. Similarly, in zip code 21213, 91.6 percent of residents are African-American and 6.2 percent are White. U.S. CENSUS BUREAU, 2010 CENSUS (2010); 21.8 percent of individuals live below the poverty level, including 27.5 percent of individuals under 18 years of age. 7.3 percent families have an annual income of less than \$10,000. The unemployment rate was at 19.0 percent. U.S. CENSUS BUREAU, 2008–2012 AMERICAN COMMUNITY SURVEY (2012).

<sup>105</sup> Zip code 21223 contains the following neighborhoods: Franklin Square, Mt. Claire, Carrolton Ridge, Shipley Hill, Harlem Park and portions of Sandtown-Winchester and Pigtown. Zip code 21223's makeup is 75.2 percent African-American and 19.1 percent White – the largest percentage of non-minorities of any of the areas examined in this study. U.S. CENSUS BUREAU, 2010 CENSUS (2010); additionally, 37.4 percent of individuals live below the poverty level, including, 49.0 percent of individuals who are under 18 years of age. 13.7 percent of families have annual income of less than \$10,000. The unemployment rate is 22.7 percent. U.S. CENSUS BUREAU, 2008–2012 AMERICAN COMMUNITY SURVEY (2012).

<sup>106</sup> "Special education" refers to students receiving particular education services in school such as an individual education plan ("IEP"). MARYLAND DEPARTMENT OF JUVENILE SERVICES, DATA RESOURCE GUIDE FISCAL YEAR 2013 122 (2013), available at [http://www.djs.state.md.us/drg/Full\\_DRG\\_With\\_Pullouts\\_2013.pdf](http://www.djs.state.md.us/drg/Full_DRG_With_Pullouts_2013.pdf).

<sup>107</sup> Learning disability refers to students diagnosed with a disability that impedes normal learning functions such as attention deficit disorder and dyslexia, to name a few. See National Center for Learning Disabilities, *What Are Learning Disabilities?* <http://ncl.org/types-learning-disabilities/what-is-ld/what-are-learning-disabilities/print> (last visited Nov. 3, 2014).

**Figure 1**

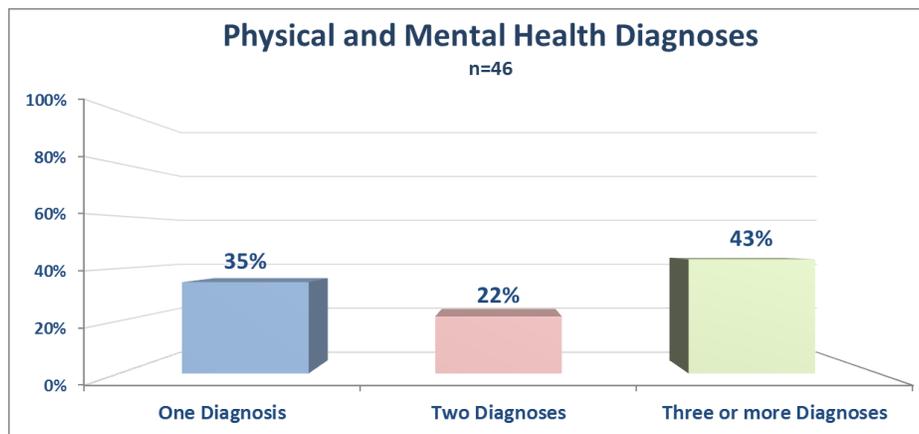
Finally, we examined the physical and mental health condition of the respondents as reported in their Counseling, Medication, and Education and Treatment (CMET) evaluation.<sup>108</sup> In all, we found 46 percent of respondents were given a CMET evaluation at some point during their contact with the juvenile justice system. Of that 46 percent, 35 percent were diagnosed with at least one ailment, 22 percent with two ailments, and 43 percent with three or more ailments.<sup>109</sup>

<sup>108</sup> The CMET is a “post-adjudicatory mental health evaluation of children and youth who are under the supervision of the DJS. These evaluations provide information to assist the Juvenile Court Judiciary in making decisions on mental health and other treatment needs. This information is also essential to the DJS case managers for planning purposes. All evaluations are court ordered or requested by the DJS case managers, and will take place on site at the [Baltimore City] Juvenile Justice Center. All evaluations will be performed by licensed mental health professionals hired for this purpose by the Circuit Court for Baltimore City, Medical Services Division. The Medical Services Division staff will provide administration and clinical supervision of the CMET staff.” BALTIMORE CITY BOARD OF ESTIMATES MEETING MINUTES 2496-97 (August 10, 2011), *available at* <http://comptroller.baltimorecity.gov/minutes/2011-08-10.pdf>.

<sup>109</sup> Physical and mental health diagnoses include the following ailments: conduct disorder, substance abuse, asthma, bi-polar manic depression, lead toxicity, post-traumatic stress disorder, oppositional defiant disorder, adolescent anti-social behavior, dysthymic disorder, traumatic brain injuries, disruptive behavior disorder, parental abandonment, anxiety, psychotic disorder, and adjustment disorder. Diagnosis was made via CMET evaluations. With this study, the deeper the penetration into the juvenile justice system, the more likely a respondent was to receive a CMET evaluation.

The demographic picture illustrated by this data shows that youth receiving reverse waiver were overwhelmingly older, African-American, male teens from an economically depressed part of Baltimore. Nearly half of those given a CMET evaluation had a documented physical or mental health diagnosis.

**Figure 2**

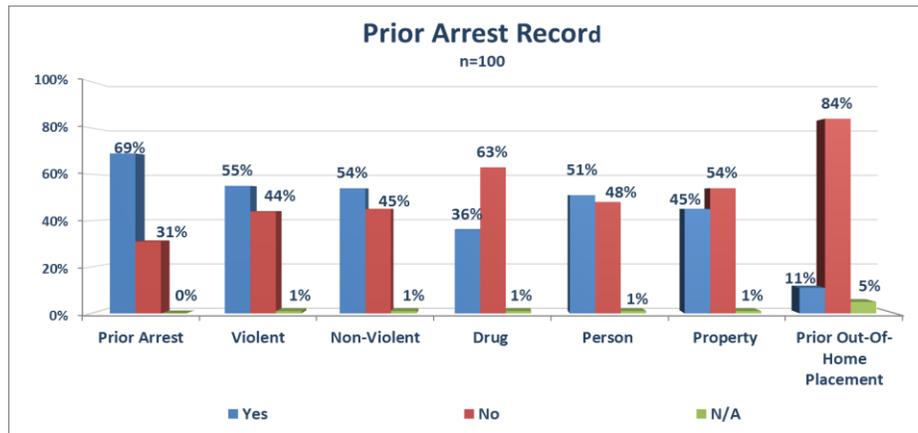


**B. What Prior System Contact Did These Youth Have?**

Two forms of system contact – prior arrests and the child welfare system – were prominently found among the youth in the study. Sixty-nine percent of respondents had a prior arrest and 55 percent of those included a prior arrest for a violent offense.<sup>110</sup>

In all, 31 percent of respondents were experiencing their first justice system contact when they were automatically charged as an adult. The average age of this group was 16.48 years of age and also included six of the ten total female respondents and all three of the white respondents. The most common charge among this group was robbery with a weapon (35 percent) followed by firearms possession (26 percent), attempted murder (10 percent), and attempted assault (10 percent).

<sup>110</sup> One percent is not accounted for because one case with a prior record was from Prince George's County and was not accessible under the court order for this study.

**Figure 3**

By comparison, youth with previous charges (69 percent) were almost exclusively black (97 percent) and male (95 percent). Among this group, robbery with a weapon (39 percent) was also the most common lead charge at arrest, followed by attempted murder (34 percent) and assault in the first-degree (16 percent). These three charges comprised 89 percent of the lead charges at arrest.

Further system contact could be found in the child welfare system. Roughly one-third of the respondents in this study had prior system involvement or were involved in the child welfare system at the time they received reverse waiver. In addition, information was unavailable for 10 percent of all respondents in this study, so this number could potentially be greater.

### *C. What Happened Between Arrest and Final Disposition?*

To understand the experience of receiving reverse waiver and the subsequent outcomes, we analyzed five different factors: (1) the length of the time between arrest and the granting of reverse waiver and the time between arrest and disposition and/or placement; (2) whether or not youth were detained during any or all of the proceedings after arrest; (3) the adjudicated outcome compared to the lead charge at arrest; (4) disposition; and, (5) recidivism.

Regarding length of time between arrest and the granting of reverse waiver, respondents spent a mean average of 140 days and a median average of 126 days in the adult system before being waived back to juvenile court.

Of the 100 respondents, 84 percent spent 100-299 days from the time of arrest to placement or the dismissal of charges. The mean average was 217 days and the median was 189.5 days. The median average represents a more accurate time frame in both figures due to extreme outliers in our sample.

During the time these youth were awaiting adjudication, more than half (57 percent) were detained. Five percent of all respondents stated they were victimized in a detention facility awaiting decisions on reverse waiver, 61 percent of respondents did not report abuse, and information was unavailable for 34 percent. Given the culture of retribution when reporting abuse in jail, these figures suggest that victimization may be underreported.<sup>111</sup>

After adjudication, slightly more than one-fourth (27 percent) were detained pending disposition. These figures remain consistent with respondents being detained awaiting placement (24 percent) pending their disposition results.

When examining the adjudication and disposition results, the study found that 29 percent of respondents received out-of-home placement, 51 percent received Community Supervision,<sup>112</sup> and 20 percent had their cases dismissed.

Concerning the respondents that received out-of-home-placement, 41 percent were special education students and 31 percent had learning disabilities. Additionally, 55 percent of those

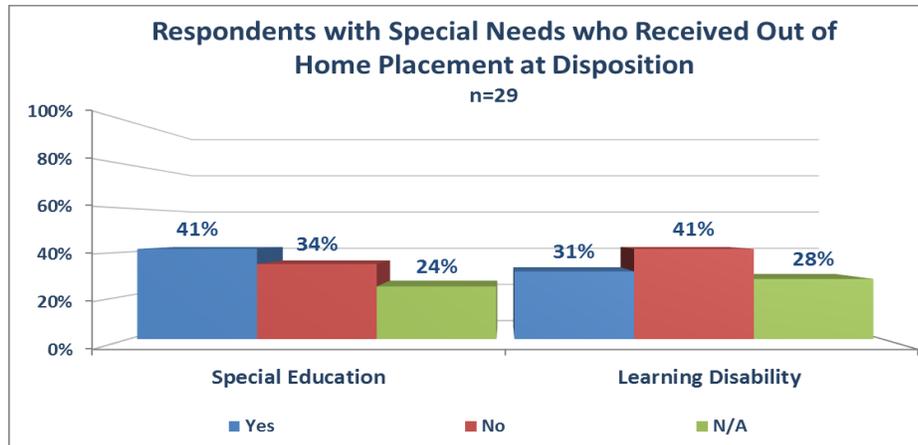
---

<sup>111</sup> Shannon Fowler et al., *Would They Officially Report an In-Prison Sexual Assault? An Examination of Inmate Perceptions*, 90 *THE PRISON J.* 220, 221–23 (2010); VINCENT SCHIRALDI & JASON ZEIDENBERG, *THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS* (1997).

<sup>112</sup> The following are classified as Community Supervision: probation, community detention (CD), community detention with electronic monitoring (CD-EM), community detention with electronic monitoring & GPS (CD-EM w/GPS) total house arrest, and total house arrest with GPS. See MARYLAND DEP'T OF JUVENILE SERVICES, *supra* note 92, at 17–19.

respondents receiving out-of-home placements were placed in facilities outside of the state of Maryland.

**Figure 4**

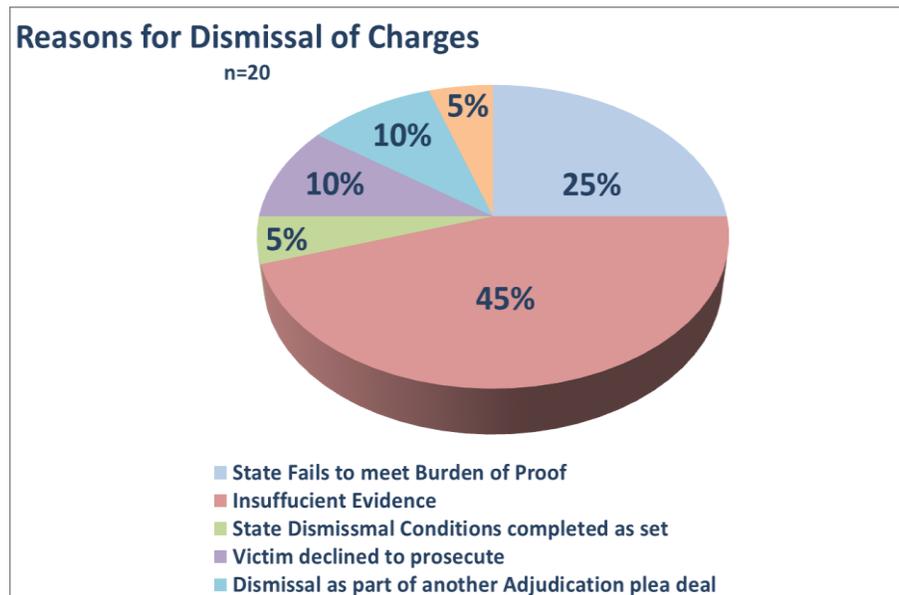


Of the 51 respondents receiving Community Supervision, 53 percent were placed on probation, 41 percent were placed on community detention (CD), and 6 percent were placed on global positioning system (GPS) monitoring.

For those on CD, 42 percent received CD without electronic monitoring, 10 percent received CD with GPS monitoring, 10 percent received CD with electronic monitoring (CD-EM), 19 percent received CD-EM with GPS, and 19 percent received CD-EM and total house arrest at disposition.

Additionally, of the respondents who received community supervision, 14 percent violated the terms of the disposition and were subsequently placed out-of-home, and 12 percent of the respondents that received community supervision had their cases transferred to other jurisdictions. This study was unable to follow cases transferred out of Baltimore City due to the court order's jurisdictional scope.

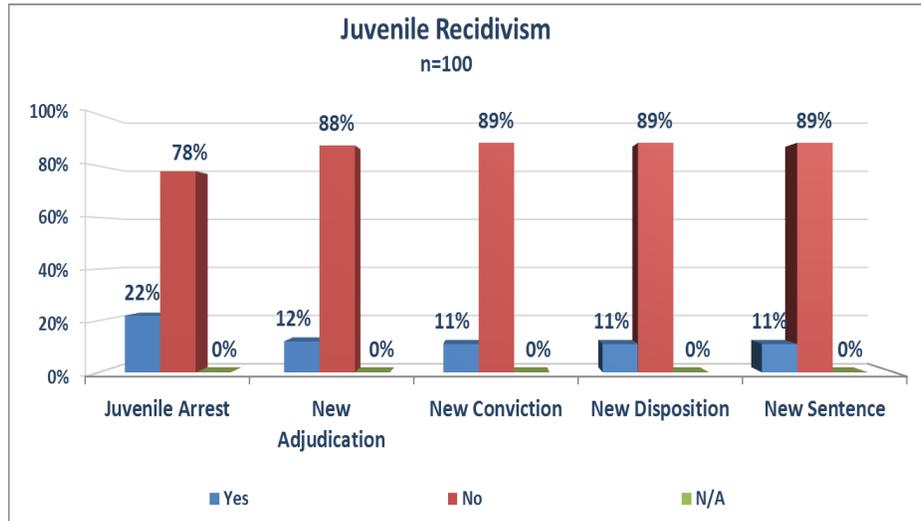
For those respondents whose charges were dismissed, the two most common reasons were insufficient evidence (45 percent), followed by failure to meet the burden of proof (25 percent).

**Figure 5**

Once the dispositional dust had settled, there is noticeable dissonance between the lead charges and the final disposition. The three most common lead charges at arrest were robbery with a weapon (32 percent), attempted murder in the first-degree (16 percent), and first-degree assault (15 percent). Conversely, when examining the final dispositions, the analysis shows that “facts not sustained – charges dismissed” is the most common disposition result (20 percent), followed by “facts sustained – first-degree assault” (14 percent), and “facts sustained – robbery” (11 percent).

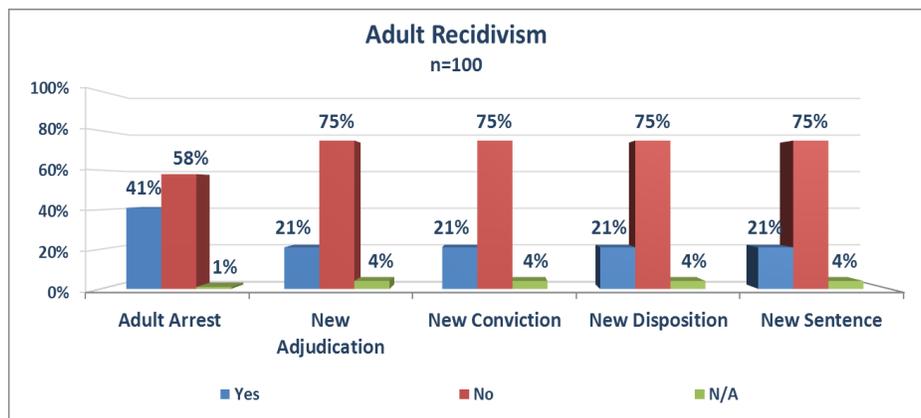
Recidivism was verified in fall of 2012. Any possible crime committed by one of the youth studied after the fall of 2012 is not reflected in this data. Slightly more than one-fifth (22 percent) of respondents had a new juvenile arrest after their adult arrest. Of those arrests, 12 percent resulted in a new adjudication, 11 percent in a new disposition, and 11 percent in a new sentence.

**Figure 6**



When examining adult recidivism, that is crimes committed by reverse waiver recipients after turning 18, arrest rates were higher, with 41 percent being arrested as an adult; however, as with juvenile recidivism, only half the arrests resulted in new conviction or sentencing.

**Figure 7**



These results give a more detailed sense of the experience of the youth receiving reverse waiver in Baltimore City. By understanding that these youth are primarily African-American males

from economically depressed areas of Baltimore City with previous system contact, this study enables more meaningful assessment of the effects and needed reforms of automatic charging laws in Maryland.

*D. On the Road to System Reform: Lessons and Recommendations*

This study opens the door for numerous conclusions and inferences to be made. In this section we discuss two major conclusions that should inform the ongoing debate around reforming the automatic charging system in Maryland.<sup>113</sup>

First, we discuss the harsh implications of over-charging youth and the need for reform to address such mistreatment. Second, we analyze the disconnect between automatic charging laws that try to send youth to the adult system and a justice system that keeps trying to send them to juvenile jurisdiction.

Comparing the lead charges at arrest to the final dispositions of the case files studied shows that there is significant dissonance between the perceived crime at arrest and what the prosecution can prove. This study found the top three lead charges were robbery with a weapon, attempted murder in the first-degree, and first-degree assault. This is compared to the top three final dispositions which were “facts not sustained – charges dismissed,” “facts sustained – first-degree assault,” and “facts sustained – robbery.” Only first-degree assault is an excluded offense in Maryland, robbery if charged at arrest would have put the youth under juvenile court jurisdiction.<sup>114</sup>

This dissonance is not a surprise, as overcharging is common;<sup>115</sup> however, in this context overcharging is the difference between adult and juvenile proceedings, detention, and possible

---

<sup>113</sup> There is more to be discussed on this matter, such as the issues revolving around poverty and race this data illustrates. This Article discusses the two areas that it does not to underplay other issues in this research, but rather to illustrate the new findings not found in previous studies on this issue.

<sup>114</sup> MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03 (West 2013).

<sup>115</sup> THE SENTENCING PROJECT, RACIAL DISPARITY IN SENTENCING: A REVIEW OF LITERATURE (2005); M.J. Leiber & K.Y. Mack, *The individual and joint effects of race, gender and family status on juvenile justice decision-making*, 40 J. RES. IN CRIME & DELINQ., 34, 60 (2005).

sanctions. It is the difference between a statutorily mandated 60-day adjudication period in the juvenile system or the average of 189.5 days spent in the adult system for those youth seeking reverse waiver. For the vast majority of cases in this study, this meant a longer time in detention. And leaving youth in an adult facility increases the likelihood of sexual and physical abuse and suicide.<sup>116</sup>

Accordingly, the implications of overcharging youth are quite stark in a criminal system that uses automatic charging laws. Too often, the data tell us, automatic charging laws lead to longer and more violent deprivations of liberty for youth that are ultimately deemed to be suitable for juvenile court and community based sanctions.

To limit overcharging, the Baltimore City Police should continue to develop and teach a training curriculum that equips police to objectively look at each situation before writing the charging document. This is of heightened importance when African-American youth account for 33 percent of Maryland's under-18 population,<sup>117</sup> but make up 80 percent of youth charged as adults.<sup>118</sup> Under the backdrop of this glaring racial disparity, police training must include cultural competency through the prism of race. Such training is critical because of implicit biases that individuals hold. Studies indicate that objective observers will believe African-American youth are older comparatively to similarly aged white youth.<sup>119</sup> The impact of this bias overcharges African-American youth for no reason, but for their race.

Maryland and Baltimore have taken steps to create such trainings, but they have not gone far enough to institutionalize them. In 2010, the Maryland Legislature passed House Bill 938/Senate Bill 1007 to mandate the creation of a cultural competency training curriculum for school-based law enforcement.<sup>120</sup> Pursuant to this

<sup>116</sup> Beyer, *supra* note 7, at 18–19.

<sup>117</sup> 2010 CENSUS, U.S. CENSUS BUREAU (2010), *available at* [http://planning.maryland.gov/msdc/census/cen2010/SF1/AgeProf/age\\_MDST.pdf](http://planning.maryland.gov/msdc/census/cen2010/SF1/AgeProf/age_MDST.pdf) and [http://planning.maryland.gov/msdc/census/cen2010/SF1/AgeRaceProf/agerace\\_MDST.pdf](http://planning.maryland.gov/msdc/census/cen2010/SF1/AgeRaceProf/agerace_MDST.pdf).

<sup>118</sup> GLENDENING ET AL., *supra* note 8, at 35.

<sup>119</sup> Dr. Philip Goff, *Talking About Race*, OPEN SOCIETY INSTITUTE (July 17, 2013), <http://www.audaciousideas.org/media-gallery/talking-about-race/>.

<sup>120</sup> MD. CODE ANN., EDUC. § 7-430 (2014).

legislation, the Maryland Police Training Commission created a cultural competency training that began in 2013; however, the number of officers in Baltimore City to have taken this course is undocumented, it is not mandatory, and it does not cover issues of implicit bias.

If progress is to be made from the current status quo of overcharging youth as adults, race needs to be front and center in that discussion,<sup>121</sup> so that we can actively foster positive police-youth interactions and understanding.

Further evidence of a broken system is the limited use of community-based treatment for youth charged as an adult and adjudicated delinquent. 71 percent of the youth in our study had their charges dismissed or received a community-based sanction. Less than a third received out-of-home placement. Whereas Maryland has recently been looking to expand detention options, the data calls instead for improvements to community-based treatment infrastructure.<sup>122</sup>

These two trends lead us to our recommendations. Coupled with the information from the Just Kids report, it is clear that automatic charging laws are wrong for youth and wrong for Baltimore City. With the majority of youth charged as adults ultimately not receiving an out-of-home placement in the juvenile *or* adult system, we have to ask: why charge them as adults in the first place?

It does not make sense to triple the average time a juvenile spends in the criminal justice system just for their cases to be

---

<sup>121</sup> The Baltimore City Police Department makes overtures to these ends in their strategic plan; however, as disproportionate minority contact in charging continues it seems that those overtures never make it to the first act. *See* BALTIMORE POLICE DEPARTMENT, PUBLIC SAFETY IN THE CITY OF BALTIMORE A STRATEGIC PLAN FOR IMPROVEMENT 96 (2013).

<sup>122</sup> MARYLAND DEPARTMENT OF JUDICIAL SERVICES, 2012 JCR RESPONSE REPORT ON EXPANDING CAPACITY AT SILVER OAK ACADEMY, 2 (2012), *available at* [http://www.djs.state.md.us/docs/2012\\_p136\\_DJS\\_Report%20on%20Expanding%20Capacity%20at%20Silver%20Oak.pdf](http://www.djs.state.md.us/docs/2012_p136_DJS_Report%20on%20Expanding%20Capacity%20at%20Silver%20Oak.pdf); MARYLAND DEPARTMENT OF JUVENILE SERVICES, RESIDENTIAL AND COMMUNITY-BASED SERVICES GAP ANALYSIS 38-41 (2013), *available at* [http://www.djs.state.md.us/docs/2013\\_GAP%20analysis.pdf](http://www.djs.state.md.us/docs/2013_GAP%20analysis.pdf).

dismissed or for a community-based sanction to be imposed – which is the outcome for the vast majority of youth in this study.

We implore that the use of automatic charging in Maryland be put to an end to or, at a minimum, be subject to a strict curtailment, and that the Department of Juvenile Services look to better fund community-based alternatives. We also urge further study in other Maryland jurisdictions to push this conversation forward.

Ending automatic charging of youth in Maryland would expedite the justice process for juveniles, put them in less danger, and allow them quicker access to the rehabilitative treatment that they need. The imperative to end automatic charging goes farther still than the immediate needs of our youth; it would also lower the likelihood of recidivism<sup>123</sup> and save communities money.

Every dollar spent in the juvenile justice system treating teens saves the criminal justice system three dollars in the future.<sup>124</sup> It is inexcusable to continue the practice of automatic charging when it is not working for the youth it effects or for society at-large.

Alongside ending automatic charging, we acknowledge that Maryland's Department of Juvenile Services needs support for taking on more youth. DJS took a positive step in this direction in the summer of 2013, as reverse waiver-eligible youth in Baltimore City are now being held at the Baltimore City Juvenile Justice Center in lieu of the adult detention center while they are pending their reverse waiver hearing.<sup>125</sup> This means that the DJS system in Baltimore City has shown that it is capable of taking on youth charged as adults.

Similar solutions should be sought in other jurisdictions, specifically Prince George's County, Montgomery County, Cecil County, and Baltimore County. These four jurisdictions represent over two-thirds of Maryland's youth-held-in-adult-jail population.<sup>126</sup> If

---

<sup>123</sup> Bishop, *supra* note 5, at 182–83; Fagan, *supra* note 6, at 93–95; Lanza-Kaduce, *supra* note 6, at 66–68.

<sup>124</sup> JUST KIDS, *supra* note 1, at 3.

<sup>125</sup> 3 JUVENILE JUSTICE MONITORING UNIT, OFFICE OF ATT'Y GEN'L, Q. REP. 6 (2013).

<sup>126</sup> OFFICE OF THE PUBLIC DEFENDER, JUVENILES HELD IN ADULT JAILS (2013).

these four counties can find a solution similar to what Baltimore City has done, then it would be easier for the DJS system to hold all youth charged as adults pending their reverse waiver hearing. As of writing, House Bill 618 and Senate Bill 172 are going through the legislative process and would create a statewide standard that would house youth in juvenile facilities pending their reverse waiver hearing.<sup>127</sup> We support such an evolution.

It is also important to begin to assess the needs of youth released back to their community. In Baltimore City, for example, the plurality of the youth that received reverse waiver were from three zip codes: 21215, 21213, and 21223. If DJS were to begin reinforcing community services in these zip codes now, they would be better suited to serve the added youth population on account of the abolition of automatic charging. Having access to services in their community coupled with being adjudicated in the juvenile system, if national studies hold true, would lower recidivism rates amongst these youth. This would leave DJS, the community, and these youth better off.

Further research on the subject should include a multi-jurisdictional study using probabilistic or random sampling. A study of this kind would allow the evidence to be presented as representative of the entire state as opposed to one jurisdiction. Additionally, a multi-jurisdictional study can potentially provide evidence of successful rehabilitation of delinquent behavior that can be iterated around the state.

We hope this study will be considered an addition to the others that declare automatic charging laws as failing our youth and our communities. Automatic charging laws open the door for overcharging to create drastic changes in a youth's life and legal reality. This seems even more misguided when considering that most youth receiving reverse waiver are not even deemed "bad" enough to warrant an out-of-home sentence. By ending automatic charging laws, the juvenile justice system will allow for better rehabilitation of Baltimore's youth, lower recidivism, and save the community money over the long term.

---

<sup>127</sup> H.B. 618, 2015 Reg. Sess. (Md. 2015); S.B. 172, 2015 Reg. Sess. (Md. 2015).

#### IV. CONCLUSION

Our reverse waiver study offers a new view of the ongoing failure of automatic charging of youth in Baltimore City. By looking at the outcomes of youth receiving reverse waiver it becomes strikingly apparent that the “tough on crime” approach championed by automatic charging laws leaves Baltimore’s youth in legal purgatory and apart from crucially needed services. It is time to do what is best for our city’s young people and put a halt to automatic charging.