



## **JUST KIDS:** **Baltimore's Youth in the Adult Criminal Justice System**

**A Report of the Just Kids  
Partnership to End the  
Automatic Prosecution of  
Youth as Adults**

**JUST KIDS**  
**PARTNERSHIP**

# JUST KIDS

## PARTNERSHIP

### About the Just Kids Partnership

The Public Justice Center, Community Law In Action, Inc., and United Parents of Incarcerated Children and Youth are partners in the effort to gather information and promote the discussion of effectively addressing crime allegedly committed by Maryland youth. The goals of the Just Kids Partnership are to: reduce the number of youth who are charged and tried as adults; advocate for policies that transfer fewer youth to the adult criminal justice system; and increase the number of effective community-based programs and practices that serve youth who are accused of serious offenses.



The **Public Justice Center (PJC)** is a nonprofit legal advocacy organization founded in Maryland in 1985 that seeks to enforce and expand the rights of people who suffer injustice because of their poverty or discrimination. We advocate in the courts, legislatures, and government agencies, and through public education and coalition building.



Founded in 1998, **Community Law In Action, Inc. (CLIA)** creates interactive educational and community based initiatives to engage young people as advocates and active citizens. Through these real-world initiatives, CLIA fosters youth and adult collaborations leading to sustainable social change, while promoting youth voice and positive youth development.



**United Parents of Incarcerated Children and Youth (UPICY)** provides technical assistance training to parents, caregivers, and professionals in the areas of advocacy, navigating the juvenile justice system, cultural competency, understanding childhood mental health challenges, special education, communication skills, stress & anger management, and conflict resolution.

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## EXECUTIVE SUMMARY

### Just Kids: Baltimore's Youth in the Adult Criminal Justice System



#### A Report of the Just Kids Partnership

Maryland's 20 year experiment with the "tough on crime" approach of automatically sending youth into adult criminal courts, jails and prisons for certain offenses has failed. National studies show that youth who are sent to adult facilities go on to commit more—and more violent—crimes than those who received rehabilitative services in the juvenile system. This costs taxpayers much more in the long run. Automatically charging youth as adults has been politically popular. But the data shows that when their cases are individually considered, most cases in Baltimore are dismissed or sent back to the juvenile system, raising the question of whether they should have been put in the adult system in the first place. The Just Kids Partnership—formed by the Public Justice Center, Community Law In Action, Inc., and United Parents of Incarcerated Children and Youth—spent a year conducting research, interviewing stakeholders, and following the cases of over 100 youth to understand and assess the impact of Maryland's laws, policies and practices charging and prosecuting youth as adults. We urge Maryland policymakers to read the results of this research. Our communities deserve no less than thoughtful, data-driven policy rather than ill-informed and politically expedient rhetoric.

Maryland is currently planning to spend over 100 million state taxpayer dollars to build a new pre-trial facility ("jail") to lock up Baltimore youth who are awaiting their trials in adult criminal court. Given the fact that nearly 70% of the youth charged as adults and locked up in the current Baltimore City jail are either released outright or sent back to the juvenile system for treatment, this costly new facility is unnecessary and unwise.

Maryland officials have heard many of these warnings before but failed to take any meaningful action. In 2001, a legislatively appointed commission on juvenile court jurisdiction released a report making several recommendations for change. For example,

the Commission recommended that the State assess why Maryland's waiver laws have a disproportionate effect on African-American youth, but the State never completed such a study, and nearly 10 years later the State has made little or no progress on this and other concerns.

#### Research Results

Despite being admonished 10 years ago by a legislatively-appointed commission to do so, the State still collects very little information on the outcomes of its treatment of youth who are charged as adults. To fill this data void, the Just Kids Partnership followed 135 individual cases of youth charged as adults in Baltimore City and found, among other things:

- 68% of youth charged as adults are either transferred back to the juvenile system or have their cases dismissed outright;
- A youth will spend almost 5 months in adult jail before he has a hearing to consider whether he should be sent to the juvenile system;
- Only 10% of the youth charged as adults actually receive sentences of time in adult prisons;
- Thirteen of the 135 study sample cases that began between January and June of 2009 have yet to be resolved as of August 2010, meaning those youth have been held in adult jail for at least 16 months without having been convicted of a crime. Meanwhile, they are not required to receive rehabilitative services or other crucial support while in adult jail.

#### Findings

##### **1. A child charged as an adult, more often than not, will have his case dismissed or returned to the juvenile system.**

When judges and attorneys look at the cases of individual youth, the majority of the time they decide to send the child to the juvenile system or not to prosecute at all. However, youth face irreparable harm from the separation from their lives in the community while they endure pre-trial incarceration in adult jails and then must face the burden caused by having an adult criminal arrest record.

*“Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults.... It would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”*

– Justice Anthony Kennedy, United States Supreme Court in *Graham v. Florida* (2010)

## **2. Charging youth as adults does not reduce crime; rather, it makes crime worse.**

A child in the adult criminal system is more likely to commit future crimes—and more violent crimes—than a child in the juvenile system. If anything, a youth in adult prison will become hardened by the experience. A child in adult prison is more likely to be raped, beaten, or commit suicide than if he was in a juvenile facility.

## **3. Providing rehabilitative services to youth reduces crime and costs less in the long run than charging youth as adults.**

Experts have estimated that overall every \$1 spent on older teens in the juvenile justice system results in \$3 of savings in the criminal justice system.

## **4. Treating a youth like an adult is contrary to scientific evidence.**

The part of the brain that deals with decision-making and risks and consequences is not fully developed in a youth. Once a child matures, he will likely age out of crime.

## **5. African-American youth are disproportionately impacted by laws charging youth as adults.**

African-American youth are severely overrepresented among youth charged as adults. All other things being equal, an African-American youth is more likely to be charged and convicted as an adult than his white peer.

## **6. Adult court transfer hearings are untimely and judges’ decisions are based on unreliable and incomplete information.**

Children spend *months or even years* in adult jails while they wait for the criminal court judges to make a decision about their cases. Frequently, judges who are not specially trained in child development or familiar with services available in the juvenile justice system make life-altering decisions in a young person’s case based on unreliable and inadequate information.

## **7. Maryland state and local agencies are not keeping track of crucial information about the effectiveness of its policy of charging youth as adults.**

*“Why adult prison? It’s not to help you better yourself but to transform you in the most messed up ways because you hear and see more crime.”*

– “Frederick,” arrested at age 16 and now serving a 30 year prison sentence in a Maryland prison

## **Recommendations**

It is time for Maryland to abandon the failed “tough on crime” strategy of automatically charging youth as adults and, instead, move to a “smart on crime” approach. We must adopt policies that actually reduce crime committed by youth. Research shows that redemption is possible for many young people if they are given the help they need. The Just Kids Partnership recommends that the State improve the system in the following ways:

### **1. Reduce the inappropriate and unnecessary prosecution of youth in adult court.**

A child should stay in the juvenile court system *unless and until* the State proves and a judge concludes that the youth is not going to be receptive to *any* rehabilitative intervention services.

### **2. End the placement of youth in adult jails while they wait for their trials.**

Maryland should instead hold a youth charged as an adult in a juvenile facility while he waits for his trial.

### **3. Reduce court hearing and trial delays and ensure reliability of information presented to the judge during waiver and transfer hearings.**

### **4. Ensure that treatment opportunities are available for older teens (17-20) in the juvenile system.**

### **5. Ensure the safety of youth who are convicted as adults and are sent to adult prison.**

### **6. Strengthen data collection efforts in order to determine the effectiveness of responses to youth crime.**

**The Just Kids Partnership is:** Community Law In Action, Inc.; the Public Justice Center; and United Parents of Incarcerated Children and Youth (formerly known as the Eric R. Villines Advocacy Institute).

For the full report and additional information, visit [www.justkidsmaryland.org](http://www.justkidsmaryland.org)

## INTRODUCTION



**“Bernard,”**\* age 17, had never been in trouble with the law until he came to visit his father in Baltimore in December 2009. During his visit, he attended a New Year’s Eve party with his sister. At midnight, several adults fired guns in the air, a celebratory tradition in some parts of Baltimore City even though it is illegal.<sup>1</sup> When the police arrived, they did not find a weapon on Bernard, although they did find four weapons in the house. Bernard was arrested with three of the adults and charged as an adult for firing a gun in the air. He was held in jail for a few days until his family was able to pay the \$15,000 bail. He pleaded with the adult court judge to send him to the juvenile system to deal with the charge there. The judge was hesitant to grant his request because she was concerned that he was too old for juvenile court. Although the prosecutor opposed Bernard’s request, the adult court judge eventually granted it, largely due to Bernard’s clean record. The juvenile court required him to get a job or be in school. Bernard is currently living with his mother, working at a restaurant, seeking opportunities to re-enroll in school, and staying out of trouble.

Every year in the United States, roughly 200,000 youth under age 18 are charged in adult criminal court.<sup>2</sup> In Maryland, approximately 1,250 girls and boys under 18 are charged as adults every year.<sup>3</sup> A child charged as an adult in Maryland is housed in an adult jail while he<sup>o</sup> waits for his trial. On any given day in Baltimore City, approximately 95 boys and girls are accused of a crime and held in the adult pretrial detention facility—the Baltimore City Detention Center (“BCDC” or the “Baltimore City jail”).<sup>4</sup> Original data analyses and research conducted for this report found that 68% of these youth will have

their cases dismissed or sent to the juvenile court system. This typically occurs only after they sit in BCDC for an average of 6 months. Meanwhile, one of the basic functions of the juvenile system—to provide rehabilitative services to children—goes unrealized.

“Get tough on crime” policies may, at first glance, seem like sensible methods to reduce crime, but the reality is that they are costly and ineffective choices that make our communities less safe. When children are charged as adults, they are more likely to subsequently commit violent crimes than if they had been kept in the juvenile system. The adult system does not offer rehabilitative services to these children, and they are returned to our communities without having had the benefit of any effective interventions.

This is not the first time that Maryland has considered this issue. In 1998, the Maryland Legislature appointed the Maryland Commission on Juvenile Jurisdiction to examine the practice of trying youth as adults. In 2001, the Commission released a report that identified multiple areas of concern about the fairness and efficacy of charging youth as adults and made several recommendations for change.<sup>5</sup> These recommendations included: making significant improvements in data collection about this population, reducing the length of time youth are held in jail while waiting for a court hearing to decide if they should be charged as juveniles instead of adults, increasing resources available for rehabilitation and treatment, and studying the overrepresentation of minority youth who are charged and convicted as adults. Nine years later, only minimal follow-up measures have been taken in response to the Commission’s findings and recommendations.

Maryland is now presented with a second opportunity to take action. The issue of trying youth as adults has been receiving increasing attention nationally. In recent years,

\* “Bernard” is a pseudonym in order to protect the youth’s privacy. All names of youth in this report have been changed unless the information is drawn from a published court case or media article or the youth has granted us permission to use his real name.

<sup>o</sup> Because the vast majority of youth tried as adults are male, we employ the male pronoun throughout the report. As of August 9,

2010, girls accounted for 5% of the 95 youth held in the Baltimore City Detention Center, an adult pretrial facility. This percentage is consistent with national numbers, of which girls account for approximately 4% of youth under 18 in adult prisons. Christopher Hartney, National Council on Crime and Delinquency Fact Sheet: Youth Under Age 18 in the Adult Criminal Justice System (June 2006).

*“If action is not taken to deal with the extraordinary number of youths legislatively waived each year, Maryland will continue to put 1,000 youths per year into adult facilities where there are very few services. Competencies will not be increased. In addition, these youths will be released from adult facilities back into the streets without the rehabilitative treatment and may further compromise public safety.”*

– Maryland Commission on Juvenile Justice Jurisdiction Report (2001)<sup>6</sup>

numerous national organizations have opposed laws that lead to youth being charged and prosecuted as adults in the adult criminal justice system. Scientists have released research about child brain development that informs how society should respond to a youth’s misdeeds, suggesting that harsh criminal penalties may backfire. The United States Supreme Court, relying on that scientific research, has struck down sentences of death or life without parole in the cases of youth who are convicted of adult crimes.

At present, Maryland is proceeding full steam ahead with this failed policy. Despite the economic recession and growing disfavor with charging youth as adults, the State of Maryland plans to spend State taxpayer dollars to build a costly new pretrial detention facility for Baltimore City youth charged as adults, with construction to commence in fall 2010. Estimated construction costs are approximately \$100 million and operating costs are estimated to be nearly \$7 million per year.<sup>17</sup> The Just Kids Partnership makes recommendations in this report to provide better, and less costly, solutions to crime committed by youth who are charged as adults.

This report is the culmination of qualitative and quantitative research to find out who these youth are, what happens to them in the adult system, and whether our current policies are effective at rehabilitating youth and reducing crime. Over the course of the last year, the Just Kids Partnership has observed court proceedings, requested and reviewed public information, and met with judges, prosecutors, defense attorneys, state juvenile and adult correctional agencies, child advocates, crime victim advocates, parents and youth impacted by the system, and others to gather their experiences and insights about children in the adult criminal justice system. We also have conducted an extensive review of literature and research, and consulted with national experts on the subject. Due to a paucity of data kept by Maryland state and local agencies about this population, the Just Kids Partnership collected its own information by tracking Baltimore City cases of youth charged as adults held in the Baltimore City jail and by issuing surveys to young people who have been convicted of adult crimes.<sup>18</sup>

The report examines the effect of Maryland laws that require charging a child as an adult for certain offenses. Because a large number of these cases originate in Baltimore City – 400 Baltimore youth are charged as adults every year,<sup>19</sup> specific data, examples, and practices referenced in the report will often relate primarily to that jurisdiction. Yet because the laws requiring adult charges against children are State laws, the report’s recommendations are applicable statewide.

It is our hope that this report and our recommendations will spur much needed change in Maryland law, policy, and practices relating to automatically charging a youth as an adult in order to get us closer to the goal of a safe and healthy community.

### **Examples of national professional organizations that support reform or abolishment of the practice of trying youth as adults**

Centers for Disease Control<sup>7</sup>

American Bar Association<sup>8</sup>

American Probation and Parole Association<sup>9</sup>

American Academy of Child and Adolescent Psychiatry<sup>10</sup>

National Alliance on Mental Illness<sup>11</sup>

American Jail Association<sup>12</sup>

Council of Juvenile Correctional Administrators<sup>13</sup>

National Council of Juvenile and Family Court Judges<sup>14</sup>

National Council on Crime and Delinquency<sup>15</sup>

American Psychiatric Association<sup>16</sup>



## How a child may end up in the adult criminal justice system



Under ordinary circumstances, if a child under 18 commits a crime in Maryland, the child's actions are typically addressed in a juvenile court. Maryland, like all other states, has long had a separate court system for minors who have committed an offense because of the recognition that children are developmentally different from adults and in need of more assistance and guidance. When a Maryland child has committed a crime, the juvenile court has three goals:

1. **Protect the community;**
2. **Hold the child accountable to the victim and the community for offenses committed; and**
3. **Assist children to become responsible and productive members of society.**<sup>20</sup>

The juvenile court has jurisdiction over a child until he turns 21.<sup>21</sup> While under the juvenile court's jurisdiction, a child is able to receive rehabilitative services from Maryland's Department of Juvenile Services (DJS).

**Currently, a child under 18 can end up in the adult criminal justice system in two different ways—automatic waiver and judicial waiver.**

### **Automatic waiver:**

An automatic waiver means that a judge does not make the decision to send the child to the adult system. Instead, Maryland law requires that a youth of a certain age who is charged with any one of a long list of felonies and misdemeanors such as assault, possession of a gun, or robbery with a weapon must automatically be charged as an adult. There are currently 33 enumerated offenses (see Appendix A for more information).<sup>22</sup> These are sometimes referred to as "excluded offenses" because they are offenses that are automatically excluded from the jurisdiction of the juvenile court.

In the 1990s, automatic waiver became a significant way in which youth were sent to the adult criminal justice system. At that time, the Maryland Legislature followed the national trend as many other states made it significantly easier to charge more children as adults. The impetus for the 1990s national trend was a rise in the juvenile crime rate and a highly publicized and scientifically unsupported theory of a new breed of child criminal—an incurable violent juvenile delinquent known as the "super-predator."<sup>23</sup> The theory has since been debunked as "utter madness" and even repudiated by its creator, John Dilulio.<sup>24</sup> The doom and gloom predictions of increases in youth crime also were not borne out; to the contrary, youth crime decreased.<sup>25</sup> Yet the automatic waiver laws are still on the books.

Even in the 1990s, when the automatic waiver laws were substantially expanded in Maryland, it was clear that placing youth in the adult criminal justice system was problematic. Stuart Simms, then Secretary of Maryland's Department of Juvenile Services and later Secretary of Maryland's Department of Public Safety and Correctional Services, said, "Every study comparing the juvenile and criminal justice systems indicate that youngsters handled by the adult system re-offend more quickly and more seriously than those handled in the juvenile system."<sup>26</sup>



## **Waiver to adult criminal court in Maryland: Every year, 1,000 youths are sent to adult criminal court by automatic waiver while only 250 are sent there by judicial waiver.<sup>27</sup>**

**Transfer:** A Maryland youth automatically waived to the adult system can, under certain circumstances, ask an adult criminal court judge, who is not required to have expertise in juvenile law or youth issues, to send the case to the juvenile court, i.e., “transfer” its jurisdiction to the juvenile court. This is sometimes referred to as a “reverse waiver.” The burden is on the youth to prove that he is suitable for rehabilitation in the juvenile system. The court hearing in which the youth tries to persuade a judge to grant his request to be sent to the juvenile system is called a “transfer hearing.”

### **Judicial waiver:**

Until the 1990s, judicial waiver was the primary method by which a Maryland youth could be sent to the adult criminal justice system. A Maryland juvenile court judge can choose to send (“waive”) to the adult criminal court any youth age 7 or older who is charged with a crime that would be punishable by life in prison or death if committed by an adult OR any child age 15 or older. The prosecutor must first prove in a “waiver hearing” that the child is unfit for services that can be provided in the juvenile justice system.

### **A child charged as an adult is held in an adult pretrial facility and, if convicted, is sent to an adult prison and housed with adults.**

Maryland county pretrial detention facilities, referred to more commonly as “jails,” vary in how they house children charged as adults. Some may place the child in the general population with adults or in isolation.<sup>28</sup> Others, like Baltimore City, have a separate area of the jail where youth are housed. When a child waiting for his trial turns 18 in the Baltimore City Detention Center (BCDC), he is immediately placed in the adult population.

If a child is convicted as an adult, he is sent to an adult prison and is housed with adults. Over the course of a year, 120 boys and girls under 18 entered Maryland’s adult prison facilities.<sup>29</sup> There is no data kept on the number of youth who were convicted and sentenced to prison when they were under 18 but have since reached the age of majority.

Only one facility in the entire state has a designated program for youth who are convicted as adults and receive a prison sentence. The Patuxent Youthful Offender Program is a program in the Patuxent Institution, a state prison facility for adults with intellectual and emotional impairments. For a youth to be admitted, courts must decide to refer him to the program for evaluation after he has been convicted as an adult. However, the court does not have any control over whether a youth is actually admitted. The demand for the Patuxent program routinely overwhelms its capacity of 160. In early 2010, there were 459 youth on the waiting list.<sup>30</sup>

*“Every study comparing the juvenile and criminal justice systems indicate that youngsters handled by the adult system re-offend more quickly and more seriously than those handled in the juvenile system.”*

*– Stuart Simms, then Secretary of Maryland’s Department of Juvenile Services and later Secretary of Maryland’s Department of Public Safety and Correctional Services*

## FINDINGS

The Just Kids Partnership's research resulted in several findings about the adult criminal justice system's failures to adequately address youth crime and provide rehabilitative opportunities to youth.



**68% of  
Baltimore City  
children charged  
as adults are  
not ultimately  
prosecuted as  
adults.**

### **Finding # 1**

**A child charged as an adult, more often than not, will have his case dismissed or returned to the juvenile system.**

*Contrary to popular belief, most children who are automatically charged as adults do not get long sentences in the adult system. In fact, the vast majority of youth do not receive adult convictions at all.*

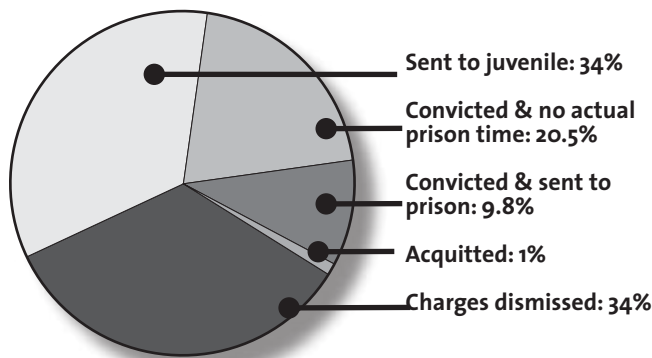
The Just Kids Partnership examined 135 cases of youth who entered the Baltimore City Detention Center (BCDC) between January and June 2009.<sup>31</sup> Consistent with national findings,<sup>32</sup> the Partnership found that most Baltimore City children charged as adults have their cases sent to juvenile court or have their case dismissed. When Baltimore City prosecutors and judges have the opportunity to more thoroughly examine these cases before trial, they determine that 68% of the cases do not belong in the adult court, either because the judge is convinced by the youth and his attorney that the youth should go to the juvenile system or because the prosecutor decided the case should not go forward at all. In the meantime, these youth spend an average of 6 months in BCDC where their lives are put on hold, they are at increased risk of harm, and taxpayers' money is wasted.

**Approximately 1/3 of the automatic adult charges against children are ultimately dismissed.**

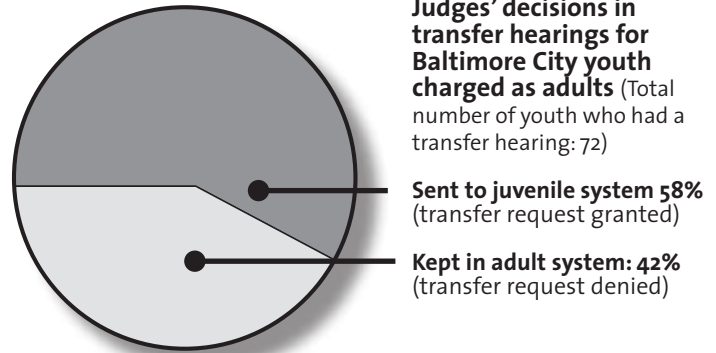
**"Davon,"** age 16, was arrested and charged with murder. He was a very small youth, always smaller than the other youth detained in the juvenile unit of BCDC. He refused to plead guilty and demanded that the state try their case against him. The day he turned 18, after being detained for a year and three months, he was transferred to the adult jail population. He waited another year for his case to go to trial. On the day jury selection for his trial was supposed to begin, 26 months after his initial arrest and detention at BCDC, the State's Attorney decided not to prosecute Davon's case.

In the Baltimore City cases examined by the Just Kids Partnership,<sup>33</sup> prosecutors decided not to prosecute 34% of the cases and dismissed the charges, but frequently only after a child had lost many months of his life in jail.<sup>34</sup>

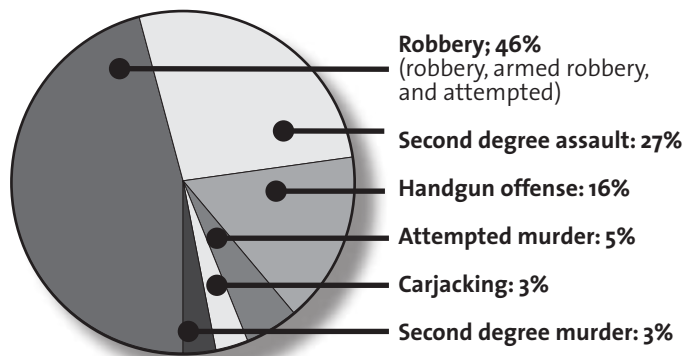
**Overall outcomes of cases of Baltimore City youth charged as adults** (Total number of youth cases that reached resolution: 122)



**Judges' decisions in transfer hearings for Baltimore City youth charged as adults** (Total number of youth who had a transfer hearing: 72)



**Types of offenses of convicted youth** (Total number of youth convicted of a crime by trial or guilty plea: 37\*)



Approximately 1/3 of children automatically charged as adults are sent to the juvenile system after being incarcerated for almost 5 months in the Baltimore City jail. The Just Kids Partnership found that the Baltimore City adult criminal court transferred 34% of all the youth charged as adults to the juvenile system.

“James” was 17 when he was charged as an adult for inappropriate sexual contact. He is 6’5”, over 300 pounds, and has a mental disability that leaves him with the mental capacity of an 8-year-old. He was incarcerated in BCDC and had to be kept in isolation from other youth because the jail did not think he was able to handle being in the general youth population because of his mental disability. He could not understand what was happening to him and kept asking when he would be able to go home and when his mother could come get him. Because James was charged as an adult, his mother was not notified about court proceedings or the status of his case. After four months in isolation in the adult jail, James’s case was transferred to the juvenile justice system, which was best equipped to provide him needed treatment.

\*One youth received probation for judgment (PBJ), meaning that if he successfully satisfies probation requirements, his charge will be dismissed.

Some children do not even have a transfer hearing, either because they are ineligible for one under Maryland law or for some other reason, such as an attorney’s failure to file a motion requesting a transfer. Therefore, judicial decisions to send youth to juvenile court are even more frequent than the 34% figure suggests. **Among the 72 youth in the Just Kids Partnership sample who actually had a transfer hearing, judges sent 58% of the youth to the juvenile justice system, where they could receive treatment and rehabilitative services.**<sup>35</sup>

**Less than 1/3 of children charged as adults are ultimately prosecuted in the adult system.** Less than one-third of the cases (30%) of Baltimore City youth charged as adults were eventually prosecuted in the adult system. Most of these youth end up pleading guilty in exchange for an agreement by the prosecutor to drop certain charges and/or recommend certain punishments. The most frequent conviction among the 37 youth who were convicted of a crime was robbery (46%, including attempted robbery, armed robbery, and attempted armed robbery). Approximately 16% of the youths’ convictions were for handgun offenses. Notably, it is not unusual for a child to plead guilty to a lesser crime that is not included in the list of automatic waiver crimes. For example, 27% of the youth



**Only 10% of all youth charged as adults end up convicted and in prison.**

who were convicted of any crime were convicted of 2<sup>nd</sup> degree assault, which is not on the list of automatically excluded crimes. In other words, if these youth were charged with 2<sup>nd</sup> degree assault in the first instance, their cases would have been tried in the juvenile system from the start, and they never would have been exposed to the adult criminal justice system.

Rather than serving actual prison time, a child convicted as an adult is more likely to be placed on probation and receive credit for the time he has already spent in jail and/or a suspended sentence (i.e., a prison sentence that the youth may have to serve if he violates terms of his probation).

The longest prison sentence received by a youth in the Just Kids study sample was 15 years (with an additional 5 years suspended) in the Department of Public Safety and Correctional Services for armed robbery. Notably, even this youth, who was given the most severe punishment, will come back to his community when he is still a young man.

The fact that more than half of the youth charged as adults have their cases sent to the juvenile justice system or dismissed and that a sizeable number of youth whose cases are prosecuted are ultimately convicted of an offense that would not have landed them in the adult criminal justice system raise many questions about the appropriateness of the practice of automatically charging youth as adults. For example, judges and defense attorneys express concern about the significant discretion a prosecutor has when charging a youth.<sup>36</sup> The criminal justice system creates incentives for prosecutors to charge the most serious crime possible, even if they are not certain they can ultimately win. This increases the prosecution's bargaining power to have the accused plead guilty to a lesser charge. But it also has the potential to sweep more youth into the adult criminal justice system.

Interviews with prosecutors revealed that they believe that they do not have the discretion to determine what criminal charges to file against a child. Yet, others interviewed for this report, including a Baltimore City criminal court judge, disagreed, observing that prosecutors have a great deal of authority and discretion. The case of "Dante" offers an example of the difference a prosecutor's crucial charging decision makes in whether a child will be charged as an adult or as a child:

**"Dante"** was awaiting a court date for a juvenile charge in a Baltimore City juvenile facility when youth in his housing unit got involved in an altercation with other youth in the facility. A fight broke out and everyone on Dante's unit was charged. Police initially charged him with 2<sup>nd</sup> degree assault, which is not an automatic adult charge. The prosecutor changed the charge to 1<sup>st</sup> degree assault, an automatic adult charge. Dante pleaded guilty to 2<sup>nd</sup> degree assault and received an adult prison sentence of 6 years and 3 years of adult probation.

*“We don’t try to rehabilitate people. We punish people.”*

– Judge Brooke Murdock, adult criminal court judge  
in Baltimore City during a youth’s transfer hearing<sup>41</sup>

## **Finding # 2**

### **Charging youth as adults does not reduce crime; rather, it makes crime worse.**

*A child in the adult criminal system is more likely to commit future crimes than a child in the juvenile system.*

Nationwide studies show that the harsher “adult time for adult crime” laws do not prevent or deter youth crime.<sup>37</sup> To the contrary, multiple studies comparing similar groups of youth in several diverse states demonstrate that youth tried in adult courts and punished in the adult corrections system go on to commit more—and more violent—crime than youth tried and punished in the juvenile system for equivalent offenses.<sup>38</sup> Nor has charging youth as adults been shown to deter overall youth crime.<sup>39</sup>

Unfortunately, Maryland does not keep specific data on recidivism rates of youth who are charged as adults, even after the 2001 Commission on Juvenile Jurisdiction made a recommendation to do so. We do know, however, that overall recidivism rates are higher for people released from Maryland’s adult system than for youth released from the juvenile system. A person released from a Maryland adult prison is 51% more likely to be incarcerated for another offense within one year of his or her release than a youth who is released from a juvenile residential facility.<sup>40</sup>

*The adult criminal justice system does not rehabilitate people.*

**Only the juvenile justice system appropriately focuses on rehabilitation as a desired outcome; the adult criminal justice system does not.** The juvenile justice system is required to offer rehabilitative services, education, and counseling but the adult criminal justice system is not.<sup>42</sup> The Maryland Department of Juvenile Services’ (DJS) mission is, similar to that of the juvenile court, to “ensure the safety of the community and the well-being and safety of the youths under DJS care, hold juvenile offenders accountable to victims and communities, and assist youths in developing competency and character to aid them in becoming successful members of society.”<sup>43</sup>

In contrast, the mission of the Maryland Department of Public Safety and Correctional Services (DPSCS), which operates the Baltimore City jail and Maryland prisons, is public safety—not to rehabilitate the people it imprisons.<sup>44</sup> The judges, attorneys, and other stakeholders interviewed for this report readily acknowledged that the adult system is not rehabilitative by design or function. If anything, a child in an adult prison can become more hardened by the experience, as shown by studies in other states and feedback collected by the Partnership.<sup>45</sup>

**Nationwide, the public favors rehabilitation over punishment as a response to serious crime committed by youth.** <sup>46</sup> For many, incarcerating youth offenders without rehabilitation is the same as giving up on them.

*“Why adult prison? It’s not to help you better yourself but to transform you in the most messed up ways because you hear and see more crime. The people who are sending us here don’t know what they are doing to us—mind, body, and soul! All of us are not killers but I’ve seen 7 people die. In here is no way for a kid to come up.”*

– “Frederick,” arrested at age 16 and is now 8 years into a 30 year prison sentence in a Maryland prison

*“Our overcrowded, ill-managed prison systems are places of violence, physical abuse, and hate, making them breeding grounds that perpetuate and magnify the same types of behavior we purport to fear.”*

– Senator Jim Webb (D-VA), sponsor of federal bill to create a National Criminal Justice Commission<sup>57</sup>

## A Just Kids Partnership survey<sup>50</sup> of 48 Maryland youth serving time in adult prisons found that:

81% had seen a murder or shooting in their neighborhood and 72% had a family member who had been murdered.

100% had a family member who had been incarcerated.

85% came from families in need of food stamps. Most of the youth reported that they had committed a crime to support themselves and/or their families.

**A youth charged with a crime is in great need of rehabilitation and intervention services.** According to national and local studies, children who get involved in crime are more likely to have mental health disorders<sup>47</sup> and educational deficits such as being several grade levels behind.<sup>48</sup> Surveys completed by the Just Kids Partnership reveal many of the youth charged as adults come from dire poverty and have been exposed to violence in their community and within their own families. One study conducted by the Baltimore City Health Department on youth involved in violence (either as perpetrators or victims) found that 48% of the young people had been involved with Child Protective Services for an allegation of abuse or neglect by their caretakers.<sup>49</sup>

In early 2009, **“Curtis,”** a 16-year-old high school student, was in a bad situation and made it worse by exercising poor judgment. Curtis lived with his sister and her seven children. His sister’s food stamps had been cut off for the month, and everyone was hungry. The school tutoring program he worked for was not able to pay him his wages on time because of reduced funding. Curtis describes his thinking at the time: **“I was hungry and I couldn’t think of any way to get something to eat other than to rob someone.”**

Curtis, in the company of a friend, committed several robberies. He and his friend were caught and charged as adults in the Baltimore City Circuit Court. The charge was armed robbery because they had used a knife when they committed the crimes. Curtis requested that the adult court transfer him to the juvenile system. He waited in adult jail for eight months until the transfer hearing. At the hearing, the staff of the school tutoring program that he worked for came to support him. The judge granted his request to return to the juvenile system where he could get services to prevent him from ever doing something like this again. Curtis is now in a juvenile residential program.

“I wish I could change what I did and I had refrained from robbing those people. In the end I realized that it was not worth the heartache and pain that my victims and family suffered. **I am disappointed with myself for not having made a better choice because so many people are counting on me to be successful.**” Curtis’s goals include finishing high school and going to college, where he wants to major in psychology. **“Thank God I have another chance at a good future and I plan to make the best of it.”**



## **A child in an adult facility is more likely to be raped, beaten, and commit suicide.**

Nationally, children housed in adult facilities are at great risk of physical harm. The likelihood of suicide, violent assault, and rape are drastically increased for a child housed in an adult facility. For example:

- Nationwide, youth have the highest suicide rates of all inmates in jail. **Youth are 36 times more likely to commit suicide in an adult jail than if they are in a juvenile detention center.**<sup>52</sup> Indeed, the leading cause of mortality for people under 18 in jail is suicide.<sup>53</sup>
- **Even though nationally only 1% of all jail inmates are youth, 21% of the victims of inmate-on-inmate sexual violence in jails are youth under 18.**<sup>54</sup>

When assaults occur in juvenile facilities, the Maryland Independent Juvenile Justice Monitor requires a full investigation and recommendations for change. The Independent Monitor has access to juvenile facilities but not to adult jails and prisons.<sup>55</sup> Indeed, there is no equivalent check against abuses in the adult criminal justice system.

County corrections officials told the Just Kids Partnership that youth in Maryland adult prisons and jails are sometimes put in isolation for their own safety. While this might protect the youth from certain harms, it creates new problems. A child in isolation is typically locked in his cell for 23 hours a day and begins to lose a sense of reality. Youth become paranoid, anxious, and despondent, all of which exacerbate mental health conditions and suicidal tendencies.<sup>56</sup> Isolation is impermissible in the juvenile system because of the known harm it has on children's mental health.<sup>57</sup>

*A child, even if convicted as an adult, will return to the community soon whether he is rehabilitated or not.*

The vast majority of youth who are charged and convicted as adults will return to their communities soon—sometimes immediately, within months, or, at most, within a few years. It is far preferable that a young person is protected from harm and receives rehabilitative opportunities before coming back than if he has not. Indeed, victims often want rehabilitative services to be offered to youth in order to prevent a child from committing any offenses in the future.

A youth with an adult conviction also faces significant reentry barriers simply because he now has an adult conviction on his record. A person with an adult conviction in Maryland is disqualified from many educational and employment opportunities as well as social service programs.<sup>60</sup> For example, he may be ineligible for public housing<sup>61</sup> and financial aid for education.<sup>62</sup> Without employment, housing, and educational opportunities, it is less likely that a youth will successfully reenter the community and remain crime-free.

*“Rehabilitative services for offenders are often preferable. Most offenders will be released and victims do not want them to re-offend.”*

*– Russell Butler, Maryland Victims' Rights Advocate<sup>59</sup>*

**A survey of the general public in neighboring Washington, D.C., showed that people favor holding youth awaiting trial in a juvenile facility rather than an adult jail.<sup>58</sup>**

## **Every \$1 spent on older teens in the juvenile justice system will result in an estimated \$3 in savings for the correctional and judicial systems.<sup>63</sup>**

### **Finding #3 Providing rehabilitative services to youth reduces crime and costs less in the long run than charging them as adults.**

In the long run, it is far less costly to help a child in the juvenile justice system get his life back on track through rehabilitation than to have him cycle in and out of the adult criminal justice system. According to John Roman, senior researcher and economist at the Urban Institute, “[i]f juveniles commit fewer crimes because they have received more and better services, fewer community members will be victimized.”<sup>64</sup>

The average total cost of a crime committed in Maryland, when calculating costs to victims, state agencies, and to society, has been estimated to be as high as \$166,400.<sup>65</sup> As mentioned in an earlier finding, research shows that youth who are charged as adults go on to commit more crimes than youth who are treated in the juvenile system. Therefore, in order to effectuate ongoing cost savings, investing in services for youth is the only sensible approach. Researchers have determined that numerous evidence-based juvenile intervention programs, such as psychotherapy and Family Functional Therapy (FFT), have been shown to produce favorable returns in investment.<sup>66</sup>

Surveys conducted in other states show that the public supports paying for services that will rehabilitate youth rather than incarcerating them because it will save money in the long run.<sup>67</sup> 90% of United States voters agree that rehabilitation services and treatment for youth can help prevent future crimes.<sup>68</sup>

**Building a jail for youth is not a good investment, and it will not reduce crime.** In the current economy, state corrections systems, including Maryland, are looking at ways to *close* correctional facilities rather than to fill them up. For example, in 2010, Maryland budget analysts recommended that the Department of Public Safety and Correctional Services (DPSCS) examine options for reducing the inmate prison population significantly enough to result in at least one facility closure in order to meet the Department’s limited staff resources.<sup>69</sup>

Maryland’s plan to build a new jail for Baltimore City youth charged as adults is inadvisable. Charging youth as adults does not reduce crime and, therefore, it does not make sense to build a costly new facility to further that failed policy. The State wants to build the youth jail in order to comply with a federal agreement with the United States Department of Justice (DOJ) to improve conditions at the Baltimore City Detention Center. That agreement does not require the construction of a new youth jail, but Maryland officials believe that the new jail is necessary to keep youth safe and separated from adults while they await their trial dates.

Even though the number of youth charged as adults and held in the Baltimore City Detention Center has been decreasing over the years (from 142 in 2007 to 95 in August 2010),<sup>71</sup> the proposed new facility is designed to hold significantly more youth—230 at its maximum capacity.<sup>72</sup> In a July 2010 report, the National Council on Crime and Delinquency (NCCD) found significant flaws in the State’s population estimates for the new facility:<sup>73</sup>

**Based on our review of their methods and of the situation in Maryland, NCCD concludes that there are serious questions about the accuracy of the [Department of Public Safety and Correctional Services] forecast. It lacks the methodological rigor to reliably forecast bed space needs for youth transferred to the adult system in Baltimore.**

**The forecast also lacks consideration of evidence-based and politically practical options likely to reduce the number of transfer youth (and juvenile justice youth) in secure custody. A full state-ordered review of such options and a new forecast accounting for them would likely substantially reduce, if not eliminate, the need to build a new facility.**

Youth advocates oppose the construction of another jail, pointing out that this money can better be spent to provide services for kids to prevent them from committing crime in the first instance and for those in

the system, to help remove them from the cycle of crime.<sup>74</sup> At the time this report was prepared, the State was in discussion with the National Council of Crime and Delinquency to conduct a new population projection of the number of beds that would be needed for any new jail.

The State has also overlooked other important steps in its planning of the proposed facility. At the same time the State has been planning to build the new youth facility, it has also been planning to build a new women’s pretrial detention facility in Baltimore. DPSCS convened a workgroup to research and make recommendations about how to design the functions of the women’s facility and best allocate resources. However, the Department never took similar measures regarding planning of the youth facility.

Removing youth from BCDC makes sense—but placing youth in an expensive, inaccurately planned new facility does not. If youth are housed in a juvenile facility rather than in an adult jail before their case is resolved, one of our recommendations, building a new youth pretrial detention facility is all the more unnecessary. Keeping youth charged as adults in juvenile facilities is quite feasible. Maryland law already permits a judge to order that a youth charged as an adult be held in a juvenile facility, although judges and attorneys frequently are not aware this option exists and so rarely use it.<sup>75</sup>

#### **Finding #4** **Treating a youth like an adult is contrary to scientific evidence.**

*A child’s brain works differently than an adult’s. Once a child matures, he will likely age out of crime.*

The practice of automatically charging Maryland youth as adults ignores important scientific findings about youth cognitive development. Children and youth are different from adults and, therefore, different approaches are necessary to effectively respond to their behavior. Science has proven that youth are much less able than adults to weigh risks and consequences of their behavior, control their impulses, handle stressful situations, and say no to peer pressure.<sup>77</sup> The part of the brain that deals with decision-making and risks and consequences is not fully developed until a person’s early 20s.<sup>78</sup> Longitudinal studies show that most youth will cease lawbreaking as part of the normal maturation process.<sup>79</sup>

In 2005, the United States Supreme Court struck down a Missouri youth’s death penalty sentence, and in 2010, the Court struck down a Florida youth’s sentence of life without parole.<sup>80</sup> In both of the cases, the Court cited the research showing cognitive development differences between children and adults.

The Supreme Court’s decision serves as a warning to lawmakers to create responses to crime committed by youth that are informed by the evidence. Maryland should no longer base its policies on a non-scientific and

*“If sending youths to the adult criminal justice system produces worse outcomes, why are we spending \$100 million to facilitate the practice?”*

– Liz Ryan, President of Campaign for Youth Justice<sup>76</sup>



*“Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. . . . It would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”*

– Justice Anthony Kennedy,  
United States Supreme Court  
in *Graham v. Florida*<sup>76</sup>

*“Due to their immaturity, juveniles generally are substantially less capable than adults of understanding the legal process in which they are involved.”*

– John W. Parry, Director of the  
American Bar Association’s  
Commission on Mental and  
Physical Disability Law<sup>81</sup>

politically expedient “get tough on crime” approach. In order to effectively reduce youth crime, Maryland law needs to reflect what we have come to learn about youth development. One Baltimore City juvenile court judge interviewed for this report remarked that our youth crime policies should be geared more toward science.

*Because of the difference in their brain development and maturity, youth in the adult criminal justice system are more likely to waive their rights and less able to assist in their own defense.*

### **A child is more likely to waive his legal rights.**

“**Ronald,**” a Baltimore City youth, was charged as an adult with armed robbery when he was 17. “I was locked up and transported to Southwestern District and questioned about some murder I don’t know anything about. I was a minor. My parents or my lawyer weren’t present. At the time, the police told me if I told them about a murder they would let me go. Are they allowed to do that?” Ronald’s case is still pending in court. As of August 1, 2010, he has been waiting in the Baltimore City Detention Center for his trial for 26 months.

When the police question a child, the child’s parent does not have to be present. Youth tend not to appreciate the significance of their legal rights and will often waive their right to remain silent and their right to counsel during police interrogation.<sup>82</sup> Youth are less future-oriented than adults and tend to put more weight on the short-term rather than long-term consequences of their decisions,<sup>83</sup> and, some youth believe that the waiver of rights will allow them to go home.<sup>84</sup>

### **A child is more likely to falsely confess to police.**

Sixteen-year-old **Allen** cut his hand while working in his family’s Cecil County, Maryland, basement. A reporter noticed Allen’s bleeding hand while researching a story on a murder victim who lived nearby. Suspecting Allen’s involvement in the murder, the reporter called the police. Allen was questioned, released, and then brought in for additional questioning the next day. The police showed Allen photos of the gruesome murder scene. Then, in an attempt to elicit a confession, they deceived Allen, faking a telephone call from the state crime laboratory which supposedly confirmed that Allen’s DNA matched the DNA of blood found at the crime scene. Allen put his head down and cried. Soon afterwards he confessed and although many of the details of his confession were incorrect, he was charged with murder. He later said: **“In my head, I thought if I told them stuff, they would let me go.”**

A few weeks later, preliminary DNA tests showed that the blood at the crime scene was not Allen’s, and suspicion began to focus on a man about

*“They’re still kids. They haven’t even grown up yet. Even if they committed an adult crime, their minds aren’t ready to face what they’re facing.”*

– “Gwen,” mother of a child convicted to 20 years in a Maryland prison

whom police had received a tip just hours after the murder. Nevertheless, Allen spent six months in jail before the charges were finally dropped.<sup>85</sup>

Young people falsely confess more often than adults.<sup>86</sup> The youth false confession rate has been estimated at 14-25%.<sup>87</sup> Youth are more suggestible, especially in stressful situations.<sup>88</sup> The police are permitted to mislead suspects, and youth are especially vulnerable to coercion and manipulation.<sup>89</sup> For example, police can present fake evidence and promise that the interrogation will end if the youth confesses. Youth begin to doubt themselves and distrust or forget their own memories.<sup>90</sup>

#### **A child cannot adequately assist in his own defense.**

A child charged with a crime is ill-equipped to help his attorney to defend him. Children are often unable to prioritize facts and information to provide attorneys what they need to begin work on the case.<sup>91</sup> Youth have difficulty remembering names and addresses and identifying facts that are important to the adults defending their case. They also may withhold information they think is damaging and embellish whatever they think helps.<sup>92</sup> At trial they often make terrible witnesses; they appear emotionless when overwhelmed and are easily led.<sup>93</sup>

#### **A child is more likely to accept a plea bargain without considering its long-term consequences.**

A child often does not fully appreciate the consequences of having an adult record, such as the impact on future employment and education; instead, a child is more likely to focus on the short term—getting out of jail or avoiding prison—and therefore may agree to plead guilty to an adult crime.<sup>94</sup> The youth is also less likely to grasp or act on the significance of long term consequences such as failure to comply with terms of probation, even minor technical ones, which may well result in serving prison time.<sup>95</sup>

#### **Parents are not involved in their child’s adult criminal proceedings.**

“Todd,” age 16, was charged with 1<sup>st</sup> degree murder. He maintained his innocence and demanded a jury trial. His case had multiple postponements,

and he did not go to trial for 14 months. Finally, on the day before trial, the judge told him in open court that if he did not take the plea agreement being offered and he was found guilty by the jury she would sentence him to life in prison. Even though he did not commit the crime, he was very frightened by this warning and wondered if he should plead guilty even though he knew he was innocent. His mother was there in the courtroom, but he could not talk with her or even turn around to see her. He returned to the jail and begged a correctional officer to make a call to his mother to get her advice. After speaking with his mother, he refused to plead guilty and was ultimately found not guilty by a jury.

A child charged with a criminal offense often wants to consult his caregiver before making decisions. A child’s case in juvenile court includes the parent as a “party” to the proceeding.<sup>96</sup> This means that the parent is provided notice of court proceedings. The judge is also more likely to hear information from the parent and allow the child to consult with his parent. Defense attorneys indicate that having the parent involved is often useful because the attorney has access to more information and the child is better able to consult with his caregiver when making major decisions.

Adult criminal proceedings, in contrast, do not include parents as parties or otherwise involve them in the process. In one transfer hearing observed by the Just Kids Partnership,<sup>97</sup> the child’s family came to court to support him at his transfer hearing. They waited in the courtroom until the judge’s clerk eventually told them that the hearing had been rescheduled to another day. No one from the court, prosecution, or defense attorney’s office notified them to let them know about this change. In another transfer hearing, the child’s grandfather wanted to address the court, but the judge denied the request.

## **Finding # 5**

### **African-American youth are disproportionately impacted by laws charging youth as adults.**

Nationwide, all other factors being equal, an African-American youth is more likely to be charged and convicted as an adult than his white peer.<sup>98</sup>

**Arrest.** African-American youth do not commit crimes more than white youth. In fact, national surveys show that compared with white youth, African-American teens commit only slightly more violent crime, about the same amount of property crime, and less drug crime. Yet African-American youth are arrested at dramatically higher rates than white youth for all types of crime.<sup>99</sup> 50% of youth arrested in Maryland are African-American even though Maryland's overall African-American population is 29%.<sup>100</sup>

Although not by design, all of the convicted youth surveyed by the Just Kids Partnership were African-American.<sup>101</sup> Three-quarters (3/4) of them felt that their interactions with the police, including stops, arrests, or beatings, have happened because of their race and/or the race of the police officer. Nearly all of the youth surveyed report having an experience of being hit, beaten, or threatened with physical violence by a police officer.

**Charged as adults.** In Maryland, 60% of youth waived to adult criminal court are African-American, and almost 80% of those charged with automatically excluded offenses are African-American.<sup>102</sup> One national study found that after controlling for the seriousness of the offense, judges were more likely to waive youth of color than white youth.<sup>103</sup>

**Incarceration.** In Baltimore City, African-American youth charged as adults are overrepresented in the pretrial detention facility. African-Americans comprise 63% of the City's population, but 99% of youth in the jail are African-American.<sup>104</sup>

In 2001, the Maryland Commission on Juvenile Jurisdiction found that Maryland's automatic waiver laws have a disproportionate effect on African-American youth and recommended that Maryland undertake a study of the causes for overrepresentation of youth of color charged with and/or convicted of adult offenses.<sup>105</sup> Such a study was apparently never conducted. Maryland officials should consider the disproportionate minority representation that exists amongst youth who are charged as adults and confined in jails and prisons statewide and take action to prevent it.



## **Finding #6**

### **Adult court transfer hearings are untimely and judges' decisions are based on unreliable and incomplete information.**

The transfer hearing to determine whether the youth who was automatically charged as an adult should be allowed to be sent to the juvenile system is a critical stage in the criminal process; it determines whether the youth will be tried in the adult system and subject to adult penalties, including incarceration in an adult prison. Youth wait months in adult jail while they wait to see a judge who considers their request to be sent to the juvenile system. Despite the crucial nature of the proceeding, transfer hearings are often perfunctory—both short in duration and lacking in information.<sup>106</sup>

*Children wait in adult jail for months while they wait for the criminal court judge to make a decision.*

The 2001 Commission on Juvenile Justice Jurisdiction was concerned that it was taking too long to hold hearings to determine whether a youth would stay in adult court. At the time of the Commission's report, an average of 4 months elapsed between the date of arrest and issuance of a court order for transfer to the juvenile court.<sup>107</sup> Nine years later, the situation has only worsened. The Just Kids Partnership found that Baltimore City youth typically wait for a transfer hearing for nearly 5 months while incarcerated in the Baltimore City Detention Center.<sup>108</sup>

Youths' prolonged detention in adult jails means not only a loss of freedom and increased risk of harm, as detailed earlier in this report, but also can negatively affect the outcome of a court's transfer decision. Children get older while they wait for the resolution of their request to be sent to the juvenile system. Court delays diminish the possibility that the court will grant the child's request to receive rehabilitative services in the juvenile system because of judges' concerns that there are no suitable juvenile programs for older youth.

*Judges are presented with unreliable and inadequate information when considering a youth's request to transfer to the juvenile system.*

**There are rarely any witnesses at transfer hearings.** Of the 11 complete hearings observed by the Just Kids Partnership, only 3 (27%) had a witness testify at the proceeding. A youth typically did not ask to testify and, in some observed proceedings, he was not permitted to address the court even when he did make such a request.<sup>109</sup>

*“In order to have adequate information to make the decision as to whether the juvenile delinquency court should retain or waive jurisdiction, the juvenile delinquency court must conduct an investigation that includes a social, physical, and forensic examination of the youth.”*

*— National Council of Juvenile and Family Court Judges*

*“Judges who hear these transfer hearings would like to have all possible information on prior treatment, attempts, and all services available for juveniles whether in-state or out-of-state and no matter what the cost.”*

*– Judge Marcella Holland, Baltimore City Circuit Court Judge*

**The youth’s attorney submits little to no evidence in support of the request to transfer the child to juvenile court.** A 2003 study of representation of children in Maryland waiver and transfer hearings found that many public defenders were ill-prepared and that they often relied only on the recommendations of the medical evaluation report.<sup>110</sup> This was still the case in many of the hearings observed by the Just Kids Partnership, whether the child was represented by the public defender or private counsel. For example, in only one of the observed cases, a defense attorney sought the help of an expert to evaluate the child. Adequately resourcing the overworked and underfunded Maryland Office of the Public Defender would help to address this issue. Maryland Public Defenders carry an average caseload of 216 cases, 60 cases more than the standard for urban caseloads.<sup>111</sup>

**Maryland transfer hearings do not have to comply with the rules of evidence that ensure reliability of information.** For example, hearsay is routinely introduced in adult court transfer hearings. Information presented to the court is typically based on one or more written reports such as a police report, Department of Juvenile Services’ description of a child’s history in the juvenile justice system, and, in Baltimore City, an evaluation by a court medical staff person. The people who prepare the reports about the child do not attend the transfer hearings and are not present to answer questions by the judge or attorneys. The Just Kids Partnership observed juvenile court waiver hearings where the juvenile court judge was asked to waive the child to the adult criminal justice system. In these hearings, in contrast to the transfer hearings observed, a representative from DJS testified. The information in the DJS written report was subject to questions by the court and attorneys. This additional inquiry revealed several flaws in the DJS report that would not have otherwise come to the fore and that made a significant difference in the outcome for the youth.

Guidelines from the National Council of Juvenile and Family Court Judges and the American Bar Association (ABA) recommend that all evidence at transfer hearings should be under oath and subject to

cross-examination.<sup>112</sup> Accordingly, it would be helpful for anyone evaluating the child or providing a written report about the child to attend a child’s hearing and to be available to answer questions under oath.

Finally, a Maryland youth requesting that he be placed in the juvenile system bears the burden of proving that he would respond well to treatment and services in the juvenile justice system. This is contrary to ABA standards which place the burden of proof on the prosecutor to prove that the child is not treatable in the juvenile system.<sup>113</sup>

**Medical evaluations of the youth are unreliable.** In Maryland, the adult court can order that an evaluation of the child be done in preparation for a transfer hearing so that the judge has information about the child to determine if the child is amenable to rehabilitative services.<sup>114</sup> In Baltimore City, these evaluations are routinely performed, and unlike other Maryland jurisdictions, they are conducted by the adult circuit court medical office (rather than by DJS personnel). Based on our interviews and transfer hearing observations, overall impressions of the court medical evaluator’s reports were neutral at best.

The medical evaluator does not administer psychological tests or conduct a thorough investigation of the youth’s history and mental health. Rather, the reports contain information derived only from the youth’s self-report and, when feasible, an interview of a family member. Relying only on self-reported information is problematic. A child is unlikely to be helpful in the course of his own psychological evaluation because youth are less likely to open up to evaluators about mental health issues, “sometimes adamantly denying existing symptoms that might be characterized as mental health or emotional problems.”<sup>115</sup>

The court medical evaluation reports do not contain pertinent information such as academic or medical records. Although the field of psychology has developed some assessment tools that help to apply the criteria the court is required to consider (those criteria are age, mental and physical condition, amenability to treatment, nature of the alleged crime, and public safety),<sup>116</sup> we saw no evidence that evaluations were utilizing any such methods. There is also a concern

*“Wrong court. Wrong day. Wrong judge.  
That’s why they say there’s diversity on the bench.”*

*– Judge Wanda Heard, Baltimore City Circuit Court, during a transfer hearing<sup>25</sup>*

that the evaluators are not adequately informed about services available in the juvenile justice system, which further hinders the usefulness of their reports.

Baltimore City judges essentially receive only social history information, a situation that is not in compliance with guidelines from the National Council of Juvenile and Family Court Judges (NCJFCJ), which advise that a court making a determination of this critical nature should have social, physical, and forensic evaluation information about a child.<sup>117</sup> Baltimore City is also deficient in its failure to meet the NCJFCJ guideline that the evaluator should understand child development and psychology and should know the services available in the juvenile system.<sup>118</sup>

*The judges who are making these crucial decisions are not adequately informed about child development or services available in the juvenile system.*

**Many adult court criminal judges are unfamiliar with youth behavior and development.** For example, during a courtroom observation, one adult court judge concluded that a youth was behaving like an adult because he did not listen to his mother and he stayed out past his curfew.

Maryland law requires specialized training for juvenile court judges about children’s issues and problems and also requires that judges assigned to that court “have the temperament necessary to deal properly with the cases and children likely to come before the court.”<sup>119</sup> There is no such requirement for adult court judges who decide transfer cases, and the results of Just Kids Partnership’s public information inquiries to the judiciary suggest that few, if any, adult court judges avail themselves of training opportunities on the subject.

A former Baltimore City juvenile court judge observed that lack of information about children’s issues can be problematic. For example, such training may help judges to distinguish children’s behavior that is predatory from that which is symptomatic of mental illness and reactions to abuse.

**Adult court judges lack adequate information about services available to the child in the juvenile system.**

Adult court judges often want to know what services are available to the child in the juvenile system to help them decide whether to grant a child’s transfer request. Yet, the Maryland Legislature has rejected the Commission on Juvenile Jurisdiction’s recommendation to require judges, even juvenile judges, to have training on available juvenile services.<sup>120</sup> The attorneys and government agencies before the courts are not helping to fill this informational void. Children’s attorneys do not typically provide the court with specific suggestions about available programming in the juvenile system. Nor do prosecutors. Rather, prosecutors often argue that the

*“[A] juvenile should never be waived to the adult system because the resource is not, but should be, available in the juvenile justice system.”*

*– National Council of Juvenile and Family Court Judges (NCJFCJ)<sup>124</sup>*

juvenile system cannot help the child. In Baltimore City transfer hearings, the Department of Juvenile Services (DJS) submits a brief written summary to the court about the child's prior interactions with the juvenile system that accompanies the court medical office report, but DJS is not present at transfer hearings and therefore cannot answer any questions about available services.

Any DJS involvement in transfer hearings must be informed and accurate. The DJS representative in observed juvenile court waiver hearings in juvenile court could not answer specific questions about available services and also made substantial errors about the youth's history of DJS services, to the youth's disadvantage.

### **Perceived (or real) lack of services in the juvenile system can lead judges to keep a child in the adult system.**

**Franklin** was 16 years old at the time he was charged in juvenile court for several offenses. He had been committed to DJS twice before and placed on probation on another occasion. He has been diagnosed as seriously emotionally disturbed and has a history of multiple suicide attempts and psychiatric hospitalizations. He was first hospitalized when he was 8 years old.

At the initial hearing to decide whether to send him to the adult court, DJS said Franklin was amenable to treatment and should be retained in the juvenile system but DJS was not at that precise time able to place Franklin in an appropriate facility for an extended duration. He had been accepted into two residential treatment programs, and at least one of them was secure, but it was only available for a brief time. The juvenile court was concerned that proper treatment be available to Franklin beyond his 18<sup>th</sup> birthday because of his age, complex and difficult history, and prior failures in rehabilitative type settings. The juvenile court waived its jurisdiction to the adult court. After the court waived Franklin to the adult criminal justice system, DJS said that suitable treatment programming had become

available but the law did not permit the adult court to send the case back to juvenile court. Franklin was therefore prosecuted as an adult, found guilty of a handgun offense, theft, and carjacking, and sentenced to 12 years in an adult prison with 5 years suspended.<sup>121</sup>

Even in situations where there is room for improvement in DJS services, the outcome should not be to send the child to the adult system where it is certain no rehabilitative opportunities will be provided.

A study by the American Bar Association found that some Maryland judges base their decision to waive on the paucity of resources available in the juvenile justice system rather than the child's need or willingness to get help.<sup>122</sup> It is not unusual for a child's request for transfer to be denied because of a perceived (or sometimes real) lack of appropriate services in the juvenile system.

There is indeed room for improvement in DJS. There are a limited number of DJS programs in Maryland who accept older youth (age 17-20) and can house the youth at a higher security level.<sup>123</sup> The DJS in-state hardware secure facility that recently opened, Victor Cullen, does not accept youth who are adjudicated for the most serious offenses. The only secure facility in Maryland that accepts youth up to age 21 is the Waxter Children's Center, a female facility. There is no such equivalent for males so boys must be sent out-of-state, a more expensive and procedurally difficult option.

DJS reports that even when there is a program that purportedly accepts older youth, in reality, it will often turn them away. Reasons include: perceived or real gang affiliation; the child no longer being enrolled in school; or given a choice to fill one slot, always opting for a younger and/or less-troubled child.

### *Judges' application of the law and decisions about whether to transfer a child to the juvenile court are erratic.*

Judges' decisions regarding whether to keep a child in the adult system or transfer him to juvenile court vary widely. It is, of course, important that judges



make decisions based on individual criteria specific to the child, and the outcomes will sometimes vary as a result of those differences. But reports from interviewed stakeholders and the Just Kids Partnership’s observation of transfer hearings find that the outcome of the decision whether to try a child as an adult depends, in large measure, on which judge is making the decision. Rather than being individualized to the child’s circumstances, a child’s future may be determined based on the personality and biases of the decision maker. This is likely attributable to a lack of guidance on how to apply the criteria a judge is required to consider in determining whether a child is likely to respond favorably to rehabilitative measures. Maryland appellate courts have offered little to no guidance in how to apply the criteria\* and, as previously mentioned, the evaluation reports submitted to the courts do not rely on any measures of these factors.

One study of judges’ decisions about trying youth as adults showed that even though they emphasized amenability to treatment as the crucial factor to consider, their decisions were actually based on their impressions of the child’s dangerousness and maturity.<sup>126</sup>

## **Finding # 7**

### **Maryland state and local agencies are not keeping track of crucial information about the effectiveness of their policy of charging youth as adults.**

In 2001, the Commission on Juvenile Justice Jurisdiction strongly recommended that data collection on youths charged as adults needed to be enhanced, including data on recidivism and outcomes of cases. At that time, tracking of youth between agencies, such as the Maryland Departments of Juvenile Services (DJS), Human Resources (DHR), and Public Safety and Correctional Services (DPSCS), was nonexistent. Nearly a decade later, the situation has not improved much. Gathering information about youth tried as adults for this report was onerous.

Since the time the Commission’s report was released, Maryland has made great strides through its use of the StateStat program, a data-based management approach to make Maryland’s government more accountable and efficient. At the present time, StateStat has not been extended to track information about the efficacy of charging youth as adults. Meanwhile, despite no evidence that charging youth as adults actually reduces crime, certain Maryland legislators have tried many times over the years to charge even more youth as adults.<sup>127</sup>

*“Judges who hear these transfer hearings would like to have all possible information on prior treatment, attempts, and all services available for juveniles whether in-state or out-of-state and no matter what the cost.”*

*– Judge Marcella Holland,  
Baltimore City Circuit Court  
Judge*

\*As mentioned previously in the report, those criteria are age, mental and physical condition, amenability to treatment, nature of the alleged crime, and public safety.

## RECOMMENDATIONS

Based on our findings, the Just Kids Partnership recommends the following:



*“Now that we have the facts borne out by every scrap of data on the subject, let’s turn our attention toward fixing a flawed strategy.”*

*– Dr. Robert Johnson, Director of the Division of Adolescent and Young Adult Medicine at UMDNJ-New Jersey Medical School and member of the Centers for Disease Control appointed Task Force on Community Prevention Services<sup>128</sup>*

### **1. Reduce the inappropriate and unnecessary prosecution of youth in adult court.**

Because 68% of youth charged as adults have their cases dismissed or transferred to the juvenile justice system, all youth crimes should instead originate in juvenile court. Maryland law and policies should be changed to stop charging youth automatically as adults and instead return discretion to the juvenile court to make decisions on a case-by-case basis. We should return to the law in place before the misguided “superpredator” legislative frenzy of the 1990s. It should be presumed that a youth is in the juvenile court’s jurisdiction *unless and until* a judge decides otherwise. The youth should be charged as an adult only after an individualized and well-supported showing by the State that the youth is not going to be receptive to any rehabilitative intervention services. Juvenile and family court judges also believe that a return to case-by-case judicial waivers is preferable.<sup>129</sup>

### **2. End the placement of youth in adult jails.**

Maryland should amend the law to include a presumption that youth charged as adults who are held pre-trial should be held in a juvenile facility. Creating a presumption in favor of juvenile facility pretrial detention will help to keep children safe and also makes sense because many of these youth are going to be sent back to the juvenile system anyway or have their charges dismissed altogether. Other states have begun to do the same. As recently as 2010, Virginia legislators unanimously voted to change the law to create such a presumption.<sup>130</sup> Maryland also needs to create safer housing options for youth who turn 18 while being held pre-trial.

### **3. Reduce court hearing and trial delays and ensure reliability of information presented to the judge during waiver and transfer hearings.**

Any adult criminal case in which the defendant was under 18 on the charging date should be conducted by judges and attorneys with specialized training and knowledge of services available in the juvenile justice system. Hearings held to decide whether a youth should be charged as an adult should be meaningful and thorough and include guidance to judges on criteria to be considered using evidence-based tools. At the same time, the hearings should be expedited so that youth are not held in jail for several months.

If Maryland adopts these recommendations, the State will be taking significant steps toward effectively reducing youth crime, improving community safety, saving taxpayer dollars, and improving fairness of the judicial process by individualizing the determination whether a youth should be tried as an adult.

It is time for Maryland to abandon the failed “tough on crime” strategy of automatically charging youth as adults and, instead, move to a “smart on crime” approach. We must adopt policies that actually reduce crime committed by youths. Research shows that redemption is possible for many young people if they are given the help they need.

Maryland should adopt the American Bar Association and National Council of Juvenile and Family Court Judges standards for conducting waiver hearings. For example, witnesses, including any evaluators of the child and a knowledgeable DJS representative, need to come to the hearings and be available to answer questions under oath.<sup>131</sup> The prosecutor should always bear the burden of proof in any hearing to decide whether to try a child in the adult system.<sup>132</sup>

#### **4. Ensure that treatment opportunities are available for older teens (17-20) in the juvenile system.**

The Department of Juvenile Services (DJS) should educate judges and attorneys about existing juvenile services program options and also ensure that there are age-appropriate and effective interventions for older and/or deep-end kids in the juvenile system. If a child is amenable to any treatment services, he should never be sent to the adult system. Instead, if services do not exist, DJS should be required to find and create necessary opportunities.

#### **5. Ensure adequate programming and safety for youth who are convicted as adults and sentenced to adult prisons.**

We recommend that the Department of Public Safety and Correctional Services convene a work-group, composed of correctional professionals, advocates, families of children convicted as adults, former youth convicted as adults, and child development experts, to evaluate the needs and practices relating to this population to ensure that they are safe, separated from adults, and have access to adequate treatment and rehabilitative services (such as education, counseling, and vocational services).

#### **6. Strengthen data collection efforts.**

We recommend improving data keeping to track the efficacy of responses to youth crime. Maryland agencies need to take a careful look and coordinate efforts to determine how to gather information pertinent to all youth who are charged with and or convicted as adults, such as arrests, charging, court hearings and outcomes, and recidivism rates. We recommend that the State designate an office to coordinate this data effort, such as the Governor’s Office on Crime Control and Prevention.

## GLOSSARY



**Acquittal** – After a trial, a judge or jury determines that the person is not guilty of the charged crime.

**Adult criminal court** – Court dedicated to hearing and deciding cases of people accused of committing crimes and who are over the age of 18.

**BCDC** – The Baltimore City Detention Center, an adult pretrial detention facility.

**Charge** – A person has been arrested by the police and is accused by the prosecutor of committing a crime. The person has not been found guilty of a crime.

**Circuit Court** – The Baltimore City Circuit Court has different divisions, including juvenile, criminal, and civil.

**Conviction** – A person is found guilty of the charged crime. This might occur after a trial in which a judge or jury determines that the defendant is guilty. It also might be a result of a plea agreement between the defendant and the prosecutor.

**Criminal court** – This term is used throughout this report to refer to the division of the Baltimore City Circuit Court that hears and decides cases involving adult criminal charges against a person.

**Dismissal** – The criminal charge against a person has been dismissed. This is also referred to as *Nolle prosequi*.

**DJS** – The Maryland Department of Juvenile Services. DJS is the agency responsible for providing rehabilitative services, which may include residential treatment to youth who have committed delinquent acts.

**DPSCS** – The Maryland Department of Public Safety and Correctional Services. DPSCS is the agency responsible for incarcerating convicted prisoners throughout Maryland and also for running the adult pretrial detention facility in Baltimore City (BCDC).

**Excluded offense** – An automatic waiver crime. It is “excluded” from the juvenile court’s jurisdiction.

**Jail** – An adult pretrial detention facility. The majority of people held there have not been convicted of a crime yet. Those that have been convicted are serving short sentences (18 months or less) for less serious crimes.

**Juvenile facility** – A child charged with committing a delinquent act might be held in a facility that houses only youth. Children held in a juvenile facility who are charged with delinquency are in “detention.” Children who the juvenile court has found delinquent and are ordered to be held in a juvenile facility are “committed.”

**Juvenile court** – A special division created to hear and decide the cases of people under the age of 18 who are accused of committing delinquent acts.



**Prison** – An adult post-conviction facility. People held in prison have been convicted of a crime and are serving sentences of incarceration.

**Probation** – Instead of or in addition to a prison sentence, a judge may require a person to comply with certain terms and rules during a period of time while not incarcerated.

**Recidivism** – New criminal offenses committed by people who have already been convicted or found delinquent of a criminal act.

**Suspended sentence** – A person convicted of a crime is given a prison sentence of a specified length that does not have to be served (it is “suspended”), but it can be activated if the person violates the terms of his or her probation.

**Time served** – The period of time that a criminal defendant has been in jail awaiting trial. If the person is convicted of a crime, the judge will likely credit the time served toward the overall sentence of incarceration.

**Transfer** – See Appendix A for a full definition.

**Waiver** – See Appendix A for a full definition.

## Appendix A: Maryland law on charging youth as adults

**AUTOMATIC WAIVER** – Youth will *automatically* be charged as adults for the following crimes (**including conspiracy** to commit them):

### 14 years old or older can be charged as adults for:

- First degree murder (and attempted)
- First degree rape (and attempted)
- First degree sex offense (and attempted)

AND ALL OTHER CHARGES STEMMING FROM THE SAME INCIDENT for the above crimes (whether or not these crimes are ones for which a youth could be automatically charged as an adult, e.g., trespass, etc.)

### 16 years old or older can be charged as adults for:

- Abduction
- Kidnapping
- Second degree murder (and attempted)
- Voluntary manslaughter
- Second degree rape (and attempted)
- Robbery with a dangerous weapon
- Second degree sexual offense (and attempted)
- Third degree sexual offense
- Firearms crimes (possession, transfer, stolen, short-barreled shotguns, possession of a firearm during drug trafficking, felon with a firearm, using a firearm in commission of a crime, or using a machine gun in a crime of violence or for an aggressive purpose)
- Carjacking (including armed carjacking)
- Assault in the first degree
- Attempted robbery with a deadly weapon

AND ALL OTHER CHARGES STEMMING FROM THE SAME INCIDENT for the above crimes (whether or not these crimes are ones for which a youth could be automatically charged as an adult, e.g., trespass, etc.)

- Transportation or boat offenses that do not have a penalty of incarceration
- Peace order proceedings

### Youth in these *categories* will automatically be charged as adults:

- Once waived, always waived – If the child was previously convicted of a felony as an adult and is alleged to have committed another felony.

Source: Md. Code, Courts & Judicial Proceedings § 3-8A-03

**DISCRETIONARY WAIVER** – Juvenile court judges can exercise their discretion to waive youth under certain circumstances.

### The following youth *may* be waived up to the adult criminal court:

- Youth 15 years old or older for any offense
- Youth under 15 who commit an act punishable by life in prison or death if it was committed by an adult. Children less than 7 years old cannot be waived.

Source: Md. Code, Courts & Judicial Proceedings § 3-8A-06

**TRANSFER (also known as “reverse waiver”)** – Under certain circumstances, youth have the opportunity to ask the adult criminal court to transfer them to the juvenile system.

### The following youth are *ineligible* for transfer; i.e., they can *never* be sent back to juvenile court:

- Youth previously transferred to juvenile court who were adjudicated delinquent
- Youth convicted in a prior unrelated case of a legislatively excluded adult criminal offense (see the automatic crimes listed above)
- Youth who allegedly commit first degree murder when they are 16 or 17 years old

Source: Md. Code, Criminal Procedure § 4-202

## Appendix B: Methodology

### CASE REVIEWS

Information in this report regarding the court or detention status of youth charged automatically as adults is based on a review of every case of youth who began their detention on the Juvenile Unit of the Baltimore City Detention Center (BCDC) from January 2009 through June 2009, a total of 152 cases. The review did not include cases of youth who were arrested and booked in the Central Booking and Intake Facility but released before entering the BCDC Juvenile Unit. From the 152 cases, 16 were excluded because researchers could not find the public record of their file, most likely because the record was expunged. The report's statistics are based on analysis of the remaining 135 cases. As of August 2010, 13 cases that began between January and July of 2009 have yet to be resolved. Therefore, statistics relating to case outcomes are drawn from the 122 resolved cases in the overall sample.

### SURVEYS

An anonymous survey was created with support from Jeff Duong, a doctoral student at Johns Hopkins University studying statistical analysis. The survey, designed to gather data about the youths' backgrounds and opinions, was mailed to 80 youth who were charged with adult crimes while under the age of 18 and are currently incarcerated in the Maryland Department of Corrections. Survey results are drawn from the number of survey respondents (48).

### COURT OBSERVATIONS

Information regarding court waiver and transfer hearings was obtained through interviews as well as observation of Baltimore City Circuit Court adult criminal and juvenile proceedings. A total of 17 hearings were observed; 14 of those hearings were complete in that they resulted in a court decision. A total of 11 completed transfer hearings were observed both in court and review of audio-visual recordings of proceedings. The 11 completed transfer hearings include different judges and different time periods, specifically: 2 hearings in 2007, 1 hearing in 2008, 3 hearings in 2009, and 5 hearings in 2010. Due to the rarity of waiver hearings, a total of 3 completed waiver hearings were observed in Baltimore City Juvenile Court, all in 2010.

## Endnotes

<sup>1</sup> Peter Hermann, "One Man, In Crossfire of New Year's Gun Busts," *Baltimore Sun* (Jan. 8, 2010).

<sup>2</sup> A Road Map for Juvenile Justice Reform: 2008 Kids Count Essay Summary (Annie E. Casey Foundation)

<sup>3</sup> See Appendix L to the Final Report to the Governor and General Assembly, Commission on Juvenile Justice Jurisdiction (Sept. 30, 2001) (providing annual number of Maryland youth tried automatically as adults; more recent data or estimates are not available); Department of Juvenile Services, FY 2009 Annual Statistical Report, Table 30 (providing number of youth waived to the adult criminal court from the juvenile court).

<sup>4</sup> Information provided by the Maryland Department of Public Safety and Correctional Services on August 9, 2010.

<sup>5</sup> Commission on Juvenile Justice Jurisdiction, Final Report to the Governor and General Assembly (Sept. 30, 2001).

<sup>6</sup> *Id.*

<sup>7</sup> Guide to Community Preventive Services. Violence prevention focused on children and youth: youth transfer to adult criminal system. [www.thecommunityguide.org/violence/youth.html](http://www.thecommunityguide.org/violence/youth.html). Last updated: 8/26/2010

<sup>8</sup> American Bar Association, Resolution on Youth in the Criminal Justice System (2002)

<sup>9</sup> Campaign For Youth Justice, Resolution Opposing the Transfer of Youth to the Adult System.

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

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

<sup>12</sup> *Id.*

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

<sup>14</sup> National Council of Juvenile and Family Court Judges, Resolution No. 5: Resolution in Support of the Best Practices and Principles of the *Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*.

<sup>15</sup> Campaign For Youth Justice, Resolution, *supra* note 9.

<sup>16</sup> American Psychiatric Association, Adjudication of Youths as Adults in the Criminal Justice System Position Statement (2005).

## Endnotes (continued)

<sup>17</sup> Analysis of the FY 2011 Maryland Executive Budget, Division of Pretrial Detention and Services (2010), available at [http://mlis.state.md.us/2010rs/budget\\_docs/all/Capital/QP00A\\_-\\_New\\_Youth\\_Detention\\_Facility.pdf](http://mlis.state.md.us/2010rs/budget_docs/all/Capital/QP00A_-_New_Youth_Detention_Facility.pdf).

<sup>18</sup> For an explanation of the Just Kids Partnership's data collection methods, please see the report's Appendix B: Methodology.

<sup>19</sup> Del Quinten Wilber, "Youth-Crime Cases Create Dilemma in Court System," *Baltimore Sun* (Nov. 5, 2003).

<sup>20</sup> Md. Code, Cts. & Jud. Proc. § 3-8A-02.

<sup>21</sup> Md. Code, Cts. & Jud. Proc. § 3-8A-07.

<sup>22</sup> Appendix A contains the complete list of automatic waiver crimes and more information about judicial waiver in Maryland. The total number of excluded offenses (33) was derived by totaling the number of offenses and attempted offenses enumerated in the law. Md. Code, Cts & Jud. Proc. 3-8A-03. The actual number of enumerated offenses is higher – certain non-incarcerable traffic and boating offenses as well as peace order proceedings are also excluded from the juvenile court's jurisdiction. Also, if the permissible common law charge of conspiracy for any of these offenses is factored in, the overall number increases significantly.

<sup>23</sup> John J. Dilulio, "The Coming of the Super-Predators," *The Weekly Standard*, Nov. 27, 1995.

<sup>24</sup> Elizabeth Becker, "As Ex-Theorist on Young 'Superpredators,' Bush Aide has Regrets," *New York Times* (Feb. 9, 2001) ("utter madness" is a quote from Franklin E. Zimring, professor of law at the University of California at Berkeley).

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

<sup>26</sup> Janet Stidman Eveleth, "Juvenile Justice Secretary Looks Ahead," *Maryland Bar Journal*, Nov./Dec. 1997.

<sup>27</sup> Appendix L to the Final Report to the Governor and General Assembly, Commission on Juvenile Justice Jurisdiction, *supra* note 3; Department of Juvenile Services, FY 2009 Annual Statistical Report, Table 30.

<sup>28</sup> For example, a recent telephone survey conducted by the Just Kids Partnership of several Maryland county pretrial facilities found that the following counties house children charged as adults with other adults: Allegany, Cecil, Charles, Frederick, Queen Anne's, St. Mary's, and Somerset. Some of those counties reported that a child may sometimes be placed in isolation for his own safety.

<sup>29</sup> Department of Public Safety and Correctional Services FY 09 Annual Report, p. 53.

<sup>30</sup> Telephone conversation with Kristina Donnelly, Patuxent Institution Public Information Officer (June 2010).

<sup>31</sup> There were actually 152 cases during this time period, but court files could not be located for 16 of the youth; therefore, the outcomes of their cases could not be tracked. See Appendix B: Methodology for more information.

<sup>32</sup> Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007).

<sup>33</sup> Data relating to case outcomes refers to the study sample of the 122 youth whose cases reached completion as of August 1, 2010. See Appendix B: Methodology for more information.

<sup>34</sup> The term "dismissal" here includes complete dismissal of the charges against the child as well as when there is a "stet" entered, meaning that the prosecutor decided to suspend the prosecution but has the choice to reopen the case at a later time.

<sup>35</sup> In 2008, the Baltimore City State's Attorney found similarly significant, albeit lower numbers. The State's Attorney reported that 46% of children were transferred to the juvenile court after a transfer hearing. See Criminal Justice Coordinating Council Meeting Minutes, May 13, 2009.

<sup>36</sup> See, for example, Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings, American Bar Association Juvenile Justice Center & Mid-Atlantic Juvenile Defender Center 62 (Oct. 2003).

<sup>37</sup> Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. MMWR 2007; 56 (Nov. RR-9); 6.

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

<sup>39</sup> Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. MMWR 2007; 56 (Nov. RR-9); 8.

<sup>40</sup> See Repeat Incarceration Supervision Cycle (RISC), Update for FY 2008, provided to Just Kids Partnership from the Maryland Department of Public Safety & Correctional Services (the re-incarceration rate for DOC releases one year out was 21.2% in 2007), and Department of Juvenile Services, StateStat Residential Placement report (July 2, 2010), StateStat reports



available at <http://www.statestat.maryland.gov/reports.asp> (the re-incarceration/recommitment rate for a youth released from a juvenile residential facility one year out was 14% in 2007).

<sup>41</sup> Comment made by Judge Brooke Murdock during a transfer hearing (March 23, 2010).

<sup>42</sup> Statutes regarding services required in juvenile system: Md. Code, Cts. & Jud. Proc. § 3-8A-02; Md. Code, Human Servs. §§ 9-226, 9-227. The only exception in the adult criminal justice system is for a child who had been receiving special education services before going to prison. The law requires this child to continue to receive special education services until age 21. 20 U.S.C. § 1412(a)(1)(B).

<sup>43</sup> Available at <http://www.djs.state.md.us/mission.html>.

<sup>44</sup> Available at <http://www.dpscs.state.md.us/aboutdpscs/>.

<sup>45</sup> Richard Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010).

<sup>46</sup> Alex Piquero & Laurence Steinberg, *Rehabilitation Versus Incarceration of Juvenile Offenders: Public Preferences in Four Model for Change States* (2008).

<sup>47</sup> Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense* 17 (May 2009) (estimating that 2/3 of young people in juvenile detention centers would meet the criteria for having a mental disorder).

<sup>48</sup> Baltimore City Health Department, *Examination of Youth Violence in Baltimore City 2002-2007* (Aug. 2009).

<sup>49</sup> *Id.*

<sup>50</sup> See Appendix B: Methodology for more information.

<sup>51</sup> Senator Jim Webb, “Why We Must Fix Our Prisons,” *Parade Magazine* (Mar. 29, 2009).

<sup>52</sup> Campaign for Youth Justice, *Jailing Juveniles*, *supra* note 32.

<sup>53</sup> Bureau of Justice Statistics, *Mortality in Local Jails, 2000-2007* (July 2010).

<sup>54</sup> Campaign for Youth Justice, *Jailing Juveniles*, *supra* note 32.

<sup>55</sup> Md. Code, State Gov’t. § 6-402.

<sup>56</sup> Campaign for Youth Justice, *Jailing Juveniles*, *supra* note 32.

<sup>57</sup> Md. Code of Regulations 16.18.02.03.

<sup>58</sup> Greenberg Quinlan Rosner Research, *Reforming DC’s Youth Incarceration System* (Aug. 2008) available at [http://www.greenbergresearch.com/articles/2228/4554\\_CYJyouth08m1.pdf](http://www.greenbergresearch.com/articles/2228/4554_CYJyouth08m1.pdf)

<sup>59</sup> Russell Butler is the Director of the Maryland Crime Victims’ Resource Center (MCVRC). His statement should not be imputed to MCVRC, which does not take a formal position on rehabilitation and/or charging youth as adults.

<sup>60</sup> For a detailed description of the collateral consequences of a criminal conviction, consult “A Report on the Collateral Consequences of Criminal Convictions in Maryland,” prepared by the Reentry of Ex-Offenders Clinic, University of Maryland School of Law (Spring 2007), available at [http://www.sentencingproject.org/doc/publications/cc\\_report2007.pdf](http://www.sentencingproject.org/doc/publications/cc_report2007.pdf).

<sup>61</sup> Public housing limits vary by jurisdiction. For an example, consult Baltimore City’s 2009 Annual Plan, available at [http://static.baltimorehousing.org/pdf/hudapproved\\_vol3\\_2009.pdf](http://static.baltimorehousing.org/pdf/hudapproved_vol3_2009.pdf).

<sup>62</sup> 20 U.S.C. § 1091 (applying to people convicted of drug offenses).

<sup>63</sup> Campaign for Youth Justice, *The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform* (2007), citing Jonathan Roman, Urban Institute, *Assessing the Economic Consequences of Juvenile versus Adult Justice* (July 2005).

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

<sup>65</sup> John Roman, et al., Urban Institute, *Impact and Cost Benefit Analysis of the Maryland Reentry Partnership Initiative* (Jan. 2007).

<sup>66</sup> Washington State Institute for Public Policy, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (Oct. 2006).

<sup>67</sup> Piquero & Steinberg, *Rehabilitation versus Incarceration*, *supra* note 46; Greenberg Quinlan Rosner Research, *Reforming DC’s Youth Incarceration System*, *supra* note 58.

<sup>68</sup> Barry Krisberg & Susan Marchionna, National Council on Crime and Delinquency, *Attitudes of U.S. Voters toward Youth Crime and the Justice System* (Feb. 2007).

<sup>69</sup> Analysis of the FY 2011 Maryland Executive Budget, 2010, available at [http://mlis.state.md.us/2010rs/budget\\_docs/all/Operating/Q00B00\\_-\\_DPSCS\\_Division\\_of\\_Correction.pdf](http://mlis.state.md.us/2010rs/budget_docs/all/Operating/Q00B00_-_DPSCS_Division_of_Correction.pdf).

<sup>70</sup> Liz Ryan, “The Wrong Solution for Troubled Youth,” *Baltimore Sun* (June 29, 2010).

## Endnotes (continued)

- <sup>71</sup> Information regarding 2010 population provided by the Maryland Department of Public Safety and Correctional Services (DPSCS) on August 9, 2010. The source of the 2007 population information is DPSCS, Project Program for New Youth Detention Center (Nov. 2007, revised Dec. 20, 2007).
- <sup>72</sup> Christopher Hartney and Susan Marchionna, National Council on Crime and Delinquency, Critique of Maryland's Population Forecast: No Call for a New Youth Detention Facility (July 2010).
- <sup>73</sup> *Id.*
- <sup>74</sup> See, for example, Mary L. Washington, "Invest in Rec Centers, Not Jails," *Baltimore Sun* (June 17, 2010).
- <sup>75</sup> Crim Pro 4-202(h); see also Md. Rule 4-252(g)(2).
- <sup>76</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010). Internal quotes and cites have been removed from the excerpts of the Court's opinion.
- <sup>77</sup> Christine S. Scott-Hayward, Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation, 31 *Law & Psychology Review* 53 (Spring 2007).
- <sup>78</sup> See the Amicus Brief of the American Medical Association and the American Academy of Child and Adolescent Psychiatry submitted to the United States Supreme Court in *Graham v. Florida*, 130 S. Ct. 2011 (2010).
- <sup>79</sup> Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense* (May 2009), citing Robert A. Sampson and John H. Laub, *Crime in the Making: Pathways and Turning Points through Life* (1993).
- <sup>80</sup> *Roper v. Simmons*, 543 U.S. 551 (2005) (death penalty); *Graham v. Florida*, 130 S. Ct. 2011 (2010) (life without parole).
- <sup>81</sup> John W. Parry, "Transfers to Adult Court and Other Related Criminal Incompetency Matters Involving Juveniles," 33 *Mental & Physical Disability Law Reporter* (Mar./Apr. 2009).
- <sup>82</sup> *Id.*
- <sup>83</sup> Scott-Hayward, Explaining Juvenile False Confessions, *supra* note 77.
- <sup>84</sup> *Id.*
- <sup>85</sup> *Id.*, citing *Baltimore Sun* article: Del Quinton Wilber, "Teen Tormented by an Erroneous Charge of Murder: Jailed Six Months in Woman's Killing, He Seeks \$18 Million," *Baltimore Sun* (Apr. 23, 2001), at 1A.
- <sup>86</sup> Scott-Hayward, Explaining Juvenile False Confessions, *supra* note 77.
- <sup>87</sup> *Id.*
- <sup>88</sup> Parry, Transfers to Adult Court, *supra* note 81.
- <sup>89</sup> Scott-Hayward, Explaining Juvenile False Confessions, *supra* note 77.
- <sup>90</sup> Amanda C. Ferguson et al., "Juvenile False Confessions and Competency to Stand Trial: Implications for Policy Reformation and Research," *The New School Psychology Bulletin*, Vol. 7, no. 1, page 66 (2010).
- <sup>91</sup> Malcolm C. Young and Jenni Gainsborough, Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences (Jan. 2000).
- <sup>92</sup> *Id.*
- <sup>93</sup> *Id.*
- <sup>94</sup> *Id.*
- <sup>95</sup> *Id.*
- <sup>96</sup> Md. Code, Cts. & Jud Proc. § 3-8A-01.
- <sup>97</sup> For more information about the Just Kids Partnership's court observations, see Appendix B: Methodology.
- <sup>98</sup> A Road Map for Juvenile Justice Reform, *supra* note 2; Eileen Poe-Yamagata and Michael Jones, *And Justice for Some* (1999).
- <sup>99</sup> A Road Map for Juvenile Justice Reform, *supra* note 2.
- <sup>100</sup> Commission on Juvenile Justice Jurisdiction, Final Report, *supra* note 5.
- <sup>101</sup> See Appendix B: Methodology for more information on how the survey was conducted.
- <sup>102</sup> Commission on Juvenile Justice Jurisdiction, Final Report, *supra* note 5.
- <sup>103</sup> Eileen Poe-Yamagata and Michael Jones, *And Justice for Some* (1999).
- <sup>104</sup> The source of the BCDC youth African-American population percentage is the Just Kids Partnership case study. See Appendix B: Methodology for more information. The source of the Baltimore City African-American population percentage is the U.S. Census Bureau, State & County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/24/24510.html> (The African-American population in Baltimore City in 2009 was 63.2%).
- <sup>105</sup> Commission on Juvenile Justice Jurisdiction, Final Report, *supra* note 5.

<sup>106</sup> Because there are so few waiver hearings in Baltimore City, these observations refer mostly to transfer hearings unless otherwise specified. See Appendix B: Methodology for more information.

<sup>107</sup> Commission on Juvenile Justice Jurisdiction, Final Report, *supra* note 5.

<sup>108</sup> Just Kids Partnership case review data. See Appendix B: Methodology for more information. The average length of pretrial detention until resolution of the case is 6 months.

<sup>109</sup> Defense attorneys are loath to advise their clients to speak in court because the current law does not protect any statements made at a transfer hearing from being used against the youth later on. Notably, waiver hearings in juvenile court permit a youth to testify without his statement being used against him in subsequent proceedings, but transfer hearings have no equivalent provisions. Md. Code, Cts. & Jud. Proc. § 3-8A-12.

<sup>110</sup> Maryland: An Assessment of Access to Counsel, *supra* note 36.

<sup>111</sup> State of Maryland Office of the Public Defender, Fiscal Year 2009 Annual Report.

<sup>112</sup> American Bar Association, Standards Relating to Transfer Between Courts, Standard 2.3H, and National Council of Juvenile and Family Court Judges, Improving Court Practice in Juvenile Delinquency Cases (2005).

<sup>113</sup> American Bar Association, Standards Relating to Transfer Between Courts, Standard 2.2A.

<sup>114</sup> Md. Code, Crim. Proc. § 4-202.

<sup>115</sup> Parry, Transfers to Adult Court, *supra* note 81.

<sup>116</sup> Md. Code, Crim. Proc. § 4-202; For more information on psychological testing in the context of waiver hearings, see Emily Polachek, Juvenile Transfer: From “Get Better” to “Get Tough” and Where We Go From Here, 35 Wm. Mitchell L. Rev. 1162 (2009), & Parry, Transfers to Adult Court, *supra* note 81.

<sup>117</sup> National Council of Juvenile and Family Court Judges, Improving Court Practice in Juvenile Delinquency Cases (2005).

<sup>118</sup> *Id.*

<sup>119</sup> Md Code, Cts. & Jud Proc § 3-806.

<sup>120</sup> Md. General Assembly, HB 973 (2002).

<sup>121</sup> In Re Franklin P., 366 Md. 306 (2001).

<sup>122</sup> Maryland: An Assessment of Access to Counsel, *supra* note 36, citing Richard E. Redding, “The Effects of Sentencing Juveniles as Adults, Research and Policy Implications.” *Youth Violence and Juvenile Justice*, Vol. 1 No. 2 (2003).

<sup>123</sup> Department of Juvenile Services, StateStat FY 10 Year to Date.

<sup>124</sup> National Council of Juvenile and Family Court Judges, *supra* note 112.

<sup>125</sup> Transfer hearing held on July 8, 2009, Baltimore City Circuit Court, The Honorable Wanda Heard.

<sup>126</sup> Dia N. Brannen et al., Transfer to Adult Court, 12 Psychology, Public Policy, and Law (Aug. 2006).

<sup>127</sup> For example, see the following Maryland General Assembly bills: HB 266 (2004) (seeking to exclude youth who had previously been found delinquent in the juvenile system for a sex offense from the juvenile court’s jurisdiction); HB 1155 (2006) (seeking to add motor vehicle theft to the list of excluded offenses); HB 587 (2007) (seeking to add gang activity to the list of excluded offenses).

<sup>128</sup> See [http://www.campaignforyouthjustice.org/documents/CDCFS\\_YouthTransfer\\_000.pdf](http://www.campaignforyouthjustice.org/documents/CDCFS_YouthTransfer_000.pdf).

<sup>129</sup> Dia N. Brannen et al., Transfer to Adult Court, *supra* note 129 (72% of juvenile court judges preferred a return to case-by-case decision making regarding whether a youth should be prosecuted as an adult).

<sup>130</sup> General Assembly of Virginia SB 259 (2010).

<sup>131</sup> See American Bar Association, Standards Relating to Transfer Between Courts, Standard 2.3G “The juvenile may examine any person who prepared any report concerning the juvenile which is presented at the waiver hearing.”; Standard 2.3H “All evidence presented at a waiver hearing should be under oath and subject to cross-examination.”

<sup>132</sup> American Bar Association, Standards Relating to Transfer Between Courts, Standard 2.3.





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