

Testimony Concerning House Bill 1433
Juvenile Court - Jurisdiction
Position: Favorable

To: Delegate Luke Clippinger, Chair
Delegate J. Sandy Bartlett, Vice Chair
Members of the Judiciary Committee

From: Monique L. Dixon, Executive Director and Michael Pinard, Faculty Director, Gibson-Banks Center for Race and the Law

Date: February 24, 2025

On behalf of the Gibson-Banks Center for Race and the Law (“Gibson-Banks Center” or “Center”) at the University of Maryland Francis King Carey School of Law,¹ we appreciate the opportunity to submit testimony concerning House Bill 1433 (HB 1433), which would limit the number of offenses for which a child could be automatically charged in adult criminal court. HB 1433 is a step in the right direction toward ending Maryland’s inefficient, racially disproportionate and harmful practice of *automatically* charging children as adults. The bill would allow the cases of more young people to begin in the juvenile court system where a judge may conduct a hearing to determine, *on a case-by-case basis*, if a young person’s case should be moved to the adult criminal legal system. Accordingly, we urge you to issue a favorable report for HB 1433.

The Gibson-Banks Center works collaboratively to transform institutions and systems of racial inequality, marginalization, and oppression. Through education and engagement, advocacy, and research, the Center examines and addresses racial inequality, including the intersection of race with sex or disability, and advances racial justice in a variety of issue areas, including the youth and criminal legal systems. The Center has served as a member of the Maryland Equitable Justice Collaborative (MEJC). Led by Maryland Attorney General Anthony Brown and Maryland Public Defender Natasha Dartigue, the MEJC aims to research, develop, and recommend reforms that reduce racial disparities in Maryland’s incarcerated population. In

¹ This written testimony is submitted on behalf of the Gibson-Banks Center and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.

December 2024, the MEJC recommended limiting the automatic charging of children in adult criminal court.² HB 1433 would codify this recommendation.

HB 1433 would move more children who find themselves in trouble with the law to the juvenile court system, which is designed to address their needs as well as the alleged offense, and is therefore more efficient and effective than automatic charging in the adult court system.

For centuries, Maryland policy makers have been of two minds about how to treat children and youth who are accused of committing a crime. On the one hand, since 1830, Maryland has maintained separate institutions and a juvenile court system for these children, acknowledging that they are different from adults and are more amenable to rehabilitative services.³ On the other hand, since the 1970s, Maryland law has allowed children to be charged and treated as adults in two ways.⁴ First, charges against a child could be filed in juvenile court, where a judge could waive jurisdiction and send the child to the adult criminal court after determining that the child “is an unfit subject for juvenile rehabilitative services;” this is known as a waiver.⁵ Second, Maryland law provides for the automatic charging of children and youth in adult criminal court for certain offenses⁶ with the opportunity to ask the adult criminal court judge to transfer the case to juvenile court if the judge determines it would be “in the interest of the child or society,” to do so; this is known as a transfer.⁷

In the mid-1990s, Maryland policymakers expanded the number of offenses for which a child could be automatically charged as an adult⁸ at a time when nationwide, violent crimes committed by young people had reached its peak; yet fearmongering and forewarnings by the media and criminologists of “super-predator” youth, particularly Black youth,⁹ who would continue to commit violent crimes persisted.¹⁰ While “the fear of an impending generation of superpredators proved to be unfounded ... and the scholar credited with originating that term has

² MEJC, *History Made: Maryland Equitable Justice Collaborative (MEJC) Passes Recommendations to Address Mass Incarceration of Black Marylanders in State Prisons and Jails*, Dec. 12, 2024, <https://www.marylandattorneygeneral.gov/press/2024/121224.pdf>.

³ See, Maryland Chapter 64, Acts of 1830 (establishing “A House of Refuge for Juvenile Delinquents”), <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000212/pdf/am212--61.pdf>. See also, Maryland Department of Juvenile Services, History of Juvenile Justice in Maryland, <https://djs.maryland.gov/Pages/about-us/History.aspx> (last visited Feb. 20, 2025).

⁴ See, Patrick Griffin, *et al*, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, 8, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, (Sept. 2011)(displaying map of states, including Maryland, where before and during the 1970s state laws either allowed juvenile courts to waive jurisdiction over children, sending “hard cases” to adult criminal court or required the automatic charging of children in adult criminal court), <https://www.ojp.gov/pdffiles1/ojjdp/232434.pdf>.

⁵ See generally, MD. CODE ANN. CTS. AND JUD. PROC. § 3-8A-06 (2020).

⁶ MD. CODE ANN. CTS. AND JUD. PROC. § 3-8A-03 (2023).

⁷ MD CODE ANN CRIM PROC § 4-202(b)(3)(2023)

⁸ 1994 Maryland Laws Ch. 641 (removing over a dozen offenses from juvenile court jurisdiction).

⁹ See generally, John J. DiIulio, Jr., *My Black Crime Problem, and Ours Why are so many blacks in prison? Is the criminal justice system racist? The answer is disquieting*, City Journal (1996), <https://fbaum.unc.edu/teaching/articles/DiIulioCityJournal1996.pdf>.

¹⁰ Marcy Mistrett and Mariana Espinoza, *Youth in Adult Courts, Jails, and Prisons*, 1, The Sentencing Project (Dec. 2021), <https://www.sentencingproject.org/reports/youth-in-adult-courts-jails-and-prisons/>.

acknowledged that his characterizations and predictions were wrong,”¹¹ Maryland’s entrenched tough-on-youth crime approach has resulted in a reflexive and harmful system of automatically charging children in adult criminal court.

Maryland holds the shameful distinction of automatically sending youth to adult criminal courts at higher rates than any other state, except Alabama.¹² In Maryland, children and youth as young as 14 may be automatically charged in adult criminal court if they are accused of committing one of 33 offenses.¹³ Notably, this entire system is inefficient and ineffective, as only a small percentage of children and youth receive a conviction in adult criminal court (16%).¹⁴ The cases of most children are either transferred to the juvenile court (45%) or dismissed (35%).¹⁵

Yet, hundreds of children and youth linger in youth detention centers or adult jails awaiting their transfer hearings. For example, the Maryland Department of Juvenile Services (DJS) reports that up to 68% of its pre-disposition detention population is youth charged as adults and their average length of stay is 147 days.¹⁶ By comparison, children and youth whose cases originate in the juvenile court system are detained pre-disposition for an average of 27 days.¹⁷ By limiting the number of offenses that results in the automatic charging of youth as adults, HB 1433 would reduce DJS’s average daily population by 120 children and youth and allow the agency to close one of its youth detention facilities and use a portion of the savings for post-disposition rehabilitation services for youth.¹⁸

Importantly, HB 1433’s limitation on the number of offenses for which a child may be automatically charged in adult criminal court would not prohibit a juvenile court judge from considering a request for a waiver hearing to determine if a child’s case should be sent to adult criminal court. Rather, HB 1433 would only prohibit *initially* charging children and youth in adult criminal court for some offenses.

HB 1433 is a necessary step to addressing the disproportionate charging, prosecution, and criminalization of Maryland’s Black children and youth, the physical and psychological harms that follow entry into the adult criminal legal system, and adolescent brain development science, which has proved that children are different from adults in ways that are relevant to culpability and rehabilitation.

¹¹ Brief of Jeffrey Fagan, *et al.*, Amici Curiae in Support of Petitioners, 8 (Jan. 17, 2012), *Miller v. Alabama*, 567 U.S. 551 (2012), <https://eji.org/wp-content/uploads/2019/11/miller-amicus-jeffrey-fagan.pdf>.

¹² The Sentencing Project, *National Trends in Charging Children as Adults*, 6 (July 20, 2021), <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Sentencing-Project-National-Trends-in-charging-children.pdf>.

¹³ MD. CODE ANN. CTS. AND JUD. PROC. § 3-8A-03 (2023).

¹⁴ Vera Institute of Justice, Preliminary Findings: Youth Charged as Adults in Maryland, 13 (Dec. 2020), <https://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>.

¹⁵ *Id.* at 12.

¹⁶ Department of Legal Services, Maryland General Assembly 2025 Session, *Fiscal and Policy Note House Bill 1433*, 4, https://mgaleg.maryland.gov/2025RS/fnotes/bil_0003/hb1433.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

Black children and youth bear the burden of Maryland’s system of automatically charging children in the adult criminal court. In fiscal year 2024, Black children comprised 81% of youth charged as adults statewide,¹⁹ well above their percentage in the state’s youth population (31%),²⁰ while white children comprised 17% of youth charged as adults,²¹ well below their percentage in the state’s youth population (39%).²² Black children who are automatically charged in adult criminal court are also overrepresented among children detained pre-disposition as they await their transfer hearings (82%), while their white peers are underrepresented (8%).²³

National research shows that Black youth are overrepresented in the youth and adult criminal legal systems, in part, because they are often seen as being older and less innocent than their white peers.²⁴ Consequently, Black youth are often unfairly feared and criminalized by the general public and decisionmakers. This adultification and criminalization of Black youth is rooted in history²⁵ and continues to lead to unjust outcomes for Black youth.²⁶ By limiting the number of offenses for which a child could be automatically charged in adult criminal court, HB 1433 may have a positive impact on Black youth who are disproportionately charged as adults, by giving them “more access to coordinated resources, individualized treatment, and a continuum of care not available in the adult system.”²⁷

Also, automatic charging exacts upon children and youth a heavy physical and psychological toll. Children and youth who are automatically charged as adults may be held in youth detention centers operated by DJS or adult jails operated by Maryland counties or the

¹⁹ Maryland Governor’s Office of Crime Prevention and Delinquency, Juvenile Charged as Adults Dashboard (June 30, 2024), <https://gocpp.maryland.gov/data-dashboards/juveniles-charged-as-adults-dashboard/>. [Hereinafter “MD Dashboard”].

²⁰ Maryland Department of Juvenile Services, *Data Resource Guide Fiscal Year 2024*, Appendix D (Dec. 2024), https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2024.pdf, [Hereinafter “Data Resource Guide”].

²¹ MD Dashboard, *supra* note 19.

²² Data Resource Guide, *supra* note 20.

²³ *Id.* at 115.

²⁴ See generally, Kristin Henning, *The Rage of Innocence: How America Criminalizes Black Youth*, Vintage Books, (2021), <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/juvenile-justice-clinic/racial-justice/the-rage-of-innocence>; See also, Phillip Goff, et al, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, Journal of Personality and Social Psychology, Vol. 106, No. 4, 526 –545 (2014), <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

²⁵ For example, George Stinney, a 14-year-old Black boy, was the youngest person executed in the U.S. in 1944; a South Carolina judge vacated Stinney’s conviction 70 years later. See, Equal Justice Initiative, *On this day Jun 16, 1944 Fourteen-Year-Old George Stinney Executed in South Carolina*, <https://calendar.eji.org/racial-injustice/jun/16>. Also, in 1989, media and elected officials dehumanized five Black and Latino teenagers in NYC – the Central Park Five – by calling them a “wolfpack.” They are now called the Exonerated Five. See, History.com Editors, *The Central Park Five*, Aug. 23, 2024, <https://www.history.com/topics/1980s/central-park-five>.

²⁶ Black children are criminalized in Maryland’s schools for example. During the 2022-23 school year, Black students comprised 33% of Maryland’s overall student population but represented 58% of students suspended and expelled from school and nearly 57% of students arrested in school. Research has consistently shown that Black students do not misbehave more than their peers. See, Russell J. Skiba, PhD and Natasha T. Williams, Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior A Summary of the Literature, 6 (March 2014), https://indrc.indiana.edu/tools-resources/pdf-disciplineseries/african_american_differential_behavior_031214.pdf,

²⁷ Maryland Department of Legislative Services, Maryland General Assembly, *Racial Equity Impact Note 2025 Session HB 1433*, 9 (Feb. 24, 2024), <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2025RS-HB1433-REIN.pdf>.

Maryland Department of Public Safety and Correctional Services (DPSCS).²⁸ Research has consistently shown that children held in adult facilities are at increased risk of physical or sexual assault or solitary confinement.²⁹ Consequently, children may become hardened by these negative experiences, which may contribute to future criminal activities. Alarming, DPSCS has recently reported that individual-on-individual assaults have doubled at the Youth Detention Center that it operates in Baltimore, which houses children who are automatically charged as adults.³⁰ The rate of assaults has surpassed those at adult detention facilities operated by DPSCS.

While additional information is needed to understand the reasons for the increased assaults at the Youth Detention Center, it underscores the urgent need to remove youth from adult jails and place them in youth detention centers operated by DJS, whose staff are trained to manage, supervise, and treat youth. HB 1433 could help address the problem of increased assaults by placing more children in the juvenile court system and youth facilities where services are available to them.

In addition, HB 1433's limits on the automatic charging of children in adult criminal is consistent with adolescent brain development science, which recognizes that children are different from adults in that they are more impulsive and unable to contemplate the impacts of their actions and behaviors. Sections of the brains of children and youth that control impulses, planning, and risk avoidance continue to develop through their mid-20s, and once they are fully developed, children are likely to grow out of delinquent and criminal behavior.³¹ Adolescent brain development has been relied upon in U.S. Supreme Court decisions declaring that sentencing children to the death penalty and life without the possibility of parole were unconstitutional because children are different from adults.³²

Children are children and need to be seen and treated as such. Accordingly, ending the automatic charging of youth as adults in Maryland is long overdue. Because we want as many children as possible to have access to age-appropriate services and accountability systems when

²⁸ Data Resource Guide, *supra* note 20 at 114. *See also*, MD CODE ANN, CRIM PRO, § 4-202(h)(2023)(stating that pending a transfer hearing, an adult criminal court could order a child automatically charged as an adult to be held in a secure youth detention center, unless the young person is released on bail, youth detention centers do not have the capacity to house the child, or the court finds detention in youth detention centers would pose a harm to the child or others).

²⁹ *See*, Human Rights for Kids, *Disposable Children The Prevalence of Child Abuse and Trauma Among Children Prosecuted and Incarcerated as Adults in Maryland*, 17 (2024), <https://humanrightsforkids.org/publication/disposable-children-the-prevalence-of-child-abuse-and-trauma-among-children-prosecuted-as-adults-in-maryland-2/>; *See also*, Marcy Mistrett and Mariana Espinoza, *Youth in Adult Courts, Jails, and Prisons*, 2-3, The Sentencing Project, (Dec. 2021), <https://www.sentencingproject.org/reports/youth-in-adult-courts-jails-and-prisons/>; Just Kids Partnership, *Just Kids: Baltimore's Youth in the Adult Criminal Justice System*, 11-13 (Oct. 2010), <https://justkidsmaryland.org/wp-content/uploads/2014/06/Just-Kids-Report.pdf>.

³⁰ Maryland Department of Public Safety and Correctional Services, *Division of Pre-Trial Detention and Services Operating Budget Fiscal Year 2026*, 6-7, <https://mgaleg.maryland.gov/pubs/budgetfiscal/2026fy-budget-docs-operating-Q00T04-DPSCS-Division-of-Pretrial-Detention-and-Services.pdf>.

³¹ Brief for the American Psychological Association, *et al*, as Amici Curiae in Support of Petitioners, 6-25, *Miller v. Alabama*, 567 U.S. 460 (2012), <https://ejl.org/wp-content/uploads/2019/11/miller-amicus-american-psychological-association.pdf>.

³² *See generally*, *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005), *Graham v. Florida*, 560 U.S. 48, 68-69 (2010), and *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012).

they find themselves in trouble with the law, we urge the Judiciary Committee to issue a favorable report on HB 1433.