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In opposition to House Bill No. 834, "AN ACT concerning Juvenile Law – Jurisdiction – Attempted Carjacking and Attempted Armed Carjacking."

February 20, 2020

House Judiciary Committee

My name is Emily Mooney, and I am a resident criminal justice policy fellow at the R Street Institute, which is a nonprofit, center-right public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government. As part of this mission, our Criminal Justice and Civil Liberties team focuses on evaluating policies related to criminal justice and the juvenile justice systems as well as ways of effectively reintegrating the formerly incarcerated into society. Therefore, HB 834 is of special interest to us.

By adding attempted carjacking and attempted armed carjacking to the list of crimes for which a child may be waived out of the juvenile system and placed in the adult system, HB 834 is at risk of undermining rather than promoting public safety.

For one, youth charged as adults generally have less access to developmentally appropriate programming and services that promote rehabilitation when compared to youth who are detained in the juvenile justice system. For example, youth in Maryland's juvenile detention centers still receive a standard week's worth of education and are able to continue being served by juvenile justice services until age 21.[1] These are services that youth do not receive in the adult system.

Additionally, the relatively low number of minors in the adult system means that incarcerated youth are more likely to be isolated and, in some cases, placed in solitary confinement in order to comply with

[1] Youth held in the DOC-run Youth Detention Center are able to regularly access education. See, e.g., "More Baltimore youths charged as adults being sent to juvenile jails." https://cnsmaryland.org/2017/10/13/more-baltimore-youths-charged-as-adults-being-sent-to-juvenile-courts; Rachel Leber, "The Long-Awaited Baltimore City Youth Detention Center Opens its Doors," *CorrectionalNews.com,* Oct. 2, 2017. http://correctionalnews.com/2017/10/02/long-awaited-baltimore-city-youth-detention-center-open-doors.

"sight and sound" separation requirements under federal law.[2] At the same time, when this separation does not occur, youth are at a high risk of sexual victimization.[3]

Finally, youth in the adult system are saddled with an adult criminal record, which carries lasting penalties for employment, housing and education.[4] This can further impede their ability to rejoin society and can serve as the impetus for future criminal activity as opportunities for productive activities are restricted. Indeed, research suggests that youth transferred to the adult system are, at best, no less likely to return to crime in the future and, at worst, may be more likely to commit crime than if they had remained in the juvenile justice system.[5]

While we acknowledge that serious offenses committed by young people can have significant consequences for victims and that the state has the duty to ensure accountability on their behalf, the state must also address its special responsibilities to protect young people from permanent harm to their development and future.

These principles are reflected in the objectives laid out in the Maryland code regarding children in the justice system. The juvenile justice system is tasked with balancing "public safety and the protection of the community; accountability for the child to the victim and the community for offense committed; and competency and character development to assist children in becoming responsible and productive members of society."[6] Unfortunately, HB 834 fails to strike that balance.

For those who are concerned with the prevalence of youth carjackings in areas like Baltimore and throughout the state, changing this penalty will do little to promote safety in the long term. Indeed, by separating youth from a system that is better-equipped to serve their needs, it might actually lead to more crime. This fails Maryland's goals of both competency and character development, not to mention its mandate to keep communities safe.

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[2] See, e.g., "Youthful Inmate Implementation," National PREA Resource Center, 2019. https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation.

[3] "National Prison Rape Elimination Commission Report," National Prison Rape Elimination Commission, June 2009, pp. 69-71. https://www.ncjrs.gov/pdf-files1/226680.pdf.

[4] See, e.g., Devah Pager, "The Mark of a Criminal Record," *Amerizcan Journal of Sociology* 108:5 (2003), pp. 937-75. https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf; Devah Pager et al., "Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records," *The Annals of the American Academy of Political and Social Science* 623:1 (2009), pp. 195-213. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3583356; Douglas Evans and Jeremy Porter, "Criminal history and landlord rental decisions: a New York quasi-experimental study," *Journal of Experimental Criminology* 11:1 (2015), pp. 23-26, 35-40. https://www.researchgate.net/profile/Jeremy_Porter2/publication/276838489_Criminal_history_and_landlord_rental_decisions_a_New_York_quasi-experimental_study/

[5] Steven Zane et al., "Juvenile Transfer and the Specific Deterrence Hypothesis," *Criminology and Public Policy* 15:3 (August 2016), pp. 901-25. https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12222; Jason Ziedenberg, "You're an Adult Now: Youth in Adult Criminal Justice Systems," National Institute of Corrections, December 2011, p. 5. http://biblioteca.cejamericas.org/bitstream/handle/2015/5434/025555.pdf?sequence=1&isAllowed=y.

[6] MD. Code Article Courts and Judicial Proceedings Section 3-8A-02. http://mgaleg.maryland.gov/2020RS/Statute_Web/gcj/3-8A-02.pdf.

The solution is clear: Begin all youth cases in the juvenile justice system, where they are more likely to benefit from an increased focus on strong, pro-social family connections and individualized services—both of which contribute to decreased future delinquency.

It's certainly possible that some children who commit violent acts have different risk factors and need different, lengthier interventions than those who commit minor offenses. We believe the best practice in these circumstances is to allow juvenile court judges attuned to the individual circumstances and facts of each case to decide whether or not to waive youth into the adult system. HB 834 takes this power and discretion away from juvenile court judges and prosecutors and places it in the hands of legislators by creating a new automatic waiver of youth into the adult system.

Judges in Maryland have repeatedly sent youth automatically charged as adults for crimes such as carjacking and robbery back to the youth system. In fiscal year 2019 alone, more than 300 youth were transferred back to the youth system, with carjacking being one of the more common offenses among transferred youth.[7] While this trend is due in part to the transfer decisions of one judge, we would point out that juvenile court judges rarely use their power to waive more serious youth cases into adult court. In 2018, less than 20 percent of youth charged as adults were sent to adult court because judges found the youth system incapable of meeting their needs or preserving public safety.[8] HB 834 would revoke this discretion. And if attempted carjacking and attempted armed carjacking are added to the list of crimes for which youth are automatically charged as adults, we can continue to expect high numbers of reverse waivers.

In the meantime, youth automatically charged as adults will spend an average of 108 days in youth detention centers (if eligible to be held there) while awaiting their transfer hearing.[9] Indeed, on the average day in FY 2019, over 100 youth charged as adults were held in juvenile detention facilities while awaiting transfer hearings.

Some legislators may want to place youth in the adult system because they feel a maximum sentence of several years in the juvenile system for an attempted armed carjacking (for example, a youth who is 17 when a carjacking occurs and could remain under juvenile jurisdiction only until age 21) may not seem retributive enough. But those of us who care about conservative principles must balance this notion of retribution with principles of limited, effective government and subsidiarity. Long sentences in the adult system aren't more effective and may actually be worse for youth and public safety outcomes.

Other proponents of this legislation argue that the bill is merely a housekeeping matter and that attempted armed carjacking and attempted carjacking were meant to be included alongside armed carjacking and carjacking in the current list of offenses for which youth are to be automatically charged

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[7] Maryland Department of Juvenile Services, "Data Resource Guide: Fiscal Year 2019," 2019, p. 116-117. https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019_.pdf.

[8] Governor's Office of Crime Control and Prevention, "Juveniles Charged as Adults in Maryland (7/1/2018 – 12/31/2018)," June 25, 2019, p. 7. http://goccp.maryland.gov/wp-content/uploads/juveniles-charged-as-adults-201807-201812.pdf.

[9] Ibid. p. 117.

as an adult. But if this is a housekeeping matter, it's coming over 20 years too late, as the armed carjacking and carjacking statutes predate the late 90s. Make no mistake, this is an attempt to enlarge the number of situations in which youth are charged and punished as adults in pursuit of a stronger deterrence policy, which researchers have long proven doesn't actually improve public safety.

Ultimately, nearly all justice-involved youth will return to their communities, and the justice system needs to equip them with the skills they need to successfully reenter society. The R Street Institute believes that by allowing juvenile defendants to begin their case in the juvenile justice system, policymakers will best promote the juvenile justice system's aims to the overall benefit of public safety, court actors and society.

Thank you for your time,

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