

Juvenile Waiver Practice in New Jersey

An Analysis of Waivers Requested, Waivers
Granted, and Waiver Cases Resolved in
Criminal Court in 2016-2017

State of New Jersey
Office of the Attorney General
Juvenile Justice Commission

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Philip D. Murphy, Governor
Sheila Y. Oliver, Lt. Governor
Gurbir S. Grewal, Attorney General
Kevin M. Brown, Executive Director
Jennifer LeBaron, Ph.D., Deputy Executive Director



Background & Purpose

In March 2016, Public Law 2015, c.89 took effect (introduced as Senate Bill 2003), making changes to the State's juvenile justice system. Significant among those changes were modifications to the law governing the transfer of youth from the Family Part ("juvenile court") to the Criminal Part ("criminal/adult court") of Superior Court. This process is known commonly as "juvenile waiver," as it reflects the circumstances under which juvenile court jurisdiction in a delinquency case is *waived* in favor of processing the youth as an adult in criminal court.

In summary, as it relates to juvenile waivers, P.L. 2015, c.89, accomplished the following:

1. Narrows the pool of waiveable offenses;
2. Eliminates the waiver of 14 year-olds;
3. Extends the time to file a waiver motion from 30 to 60 days, arguably reducing the number of waivers filed then subsequently withdrawn;
4. Enumerates factors that must be considered by the prosecutor when seeking waiver;
5. Allows a judge to deny a waiver motion if the judge is clearly convinced that the prosecutor abused discretion in considering the enumerated factors;

Background & Purpose

6. Allows a waived youth to be returned to juvenile court if all parties agree that the interests of the youth and the public will be met by such action;
7. Requires a youth convicted in criminal court on a lesser, non-waiveable offense to be returned to juvenile court for disposition in accordance with the dispositional options available to that court, and for the conviction to be recorded as a delinquency adjudication;
8. Presumes that youth waived and sentenced in criminal court to a term of incarceration shall serve that term of incarceration in a juvenile facility operated by the Juvenile Justice Commission (JJC) until the age of 21 and allows for waived youth to remain with JJC past the age of 21 at JJC's discretion and if the youth consents;
9. Presumes waived youth awaiting the outcome of their case in criminal court will be held in juvenile detention and not an adult county jail; and
10. Requires the JJC, in cooperation with the Attorney General, county prosecutors, and the Administrative Office of the Courts, to collect and analyze waiver data, prepare a biennial summary report, and publish that report on the JJC's website and submit it to the Governor and Legislature.

The purpose of this report is to meet the legislative mandate articulated under section 10. above.

Methodology

The JJC requested three data files from the Administrative Office of the Courts (AOC): 1) all youth for whom a request for waiver of jurisdiction from the Family Part to the Criminal Part of the Superior Court was made in 2016 or 2017; 2) all youth for whom a waiver request was granted in 2016 or 2017; and 3) all cases resolved in the Criminal Part in 2016 or 2017 that had originated as a delinquency complaint in the Family Part. Note that these are three separate datasets. In other words, the youth in the third dataset are not necessarily the youth in the first and second dataset. As described later, cases initiated as a waiver in one year are not typically resolved until several years later, and therefore following the cases initiated in 2016 and 2017 through to conclusion would not result in a timely report.

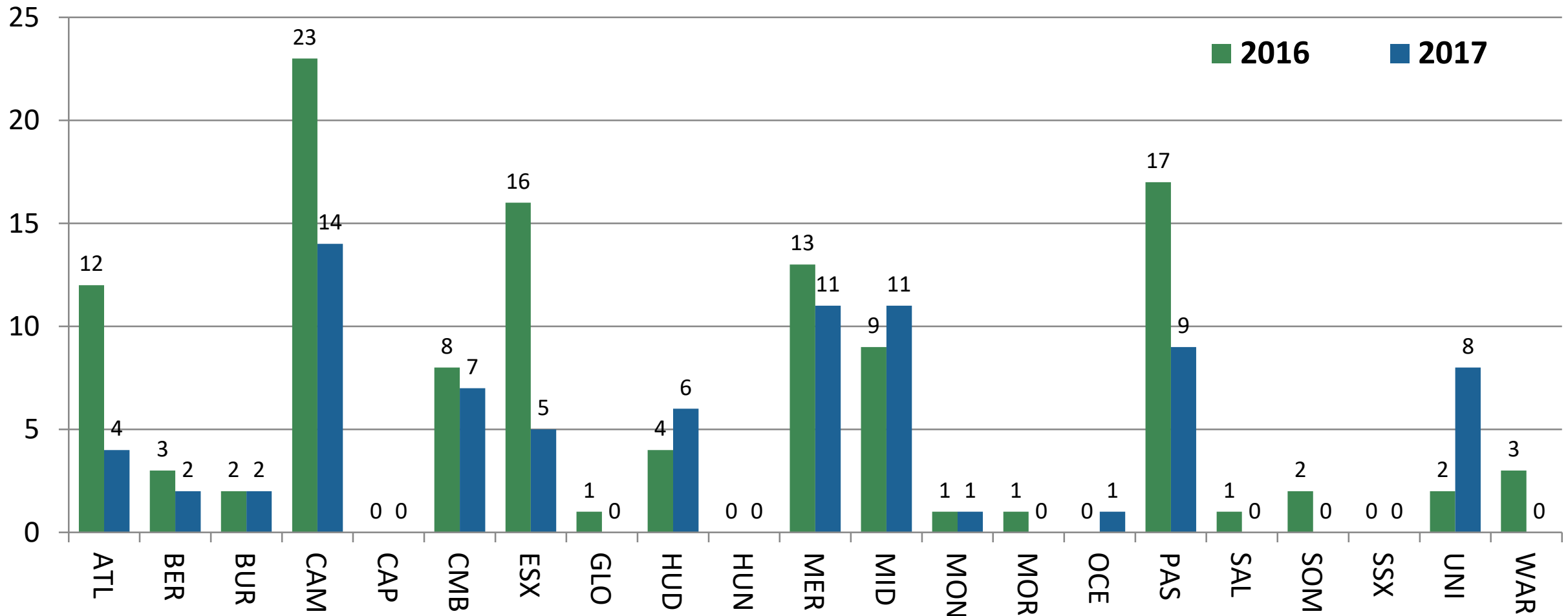
FACTS (the Family Automated Case Tracking System) served as the data source for the first two populations and Promis (Prosecutor's Management Information System)/Gavel served as the data source for the third population. Note that the unit of analysis is the *youth*, and not the *case* (i.e., youth with multiple waived cases in the timeframe of interest are represented once in the analysis).

In order to verify the completeness of the data files, each of the three files was compared to the other two, and to data files requested regarding waivers granted in earlier years. When appropriate, missing cases were added following a manual review of FACTS and/or Promis/Gavel for the relevant data points (missing cases are typically the result of data coding and data entry errors by end users at the local level). With the assistance of the Division of Criminal Justice (DCJ) within the Office of the Attorney General, all cases from the first two data files were distributed to the Juvenile Section Chiefs of each County Prosecutor's Office for final review, to ensure that the data ultimately reported herein aligns with waiver data reported annually by DCJ. Again, cases were added or edited based on feedback received through this process.

Waivers Requested 2016-2017

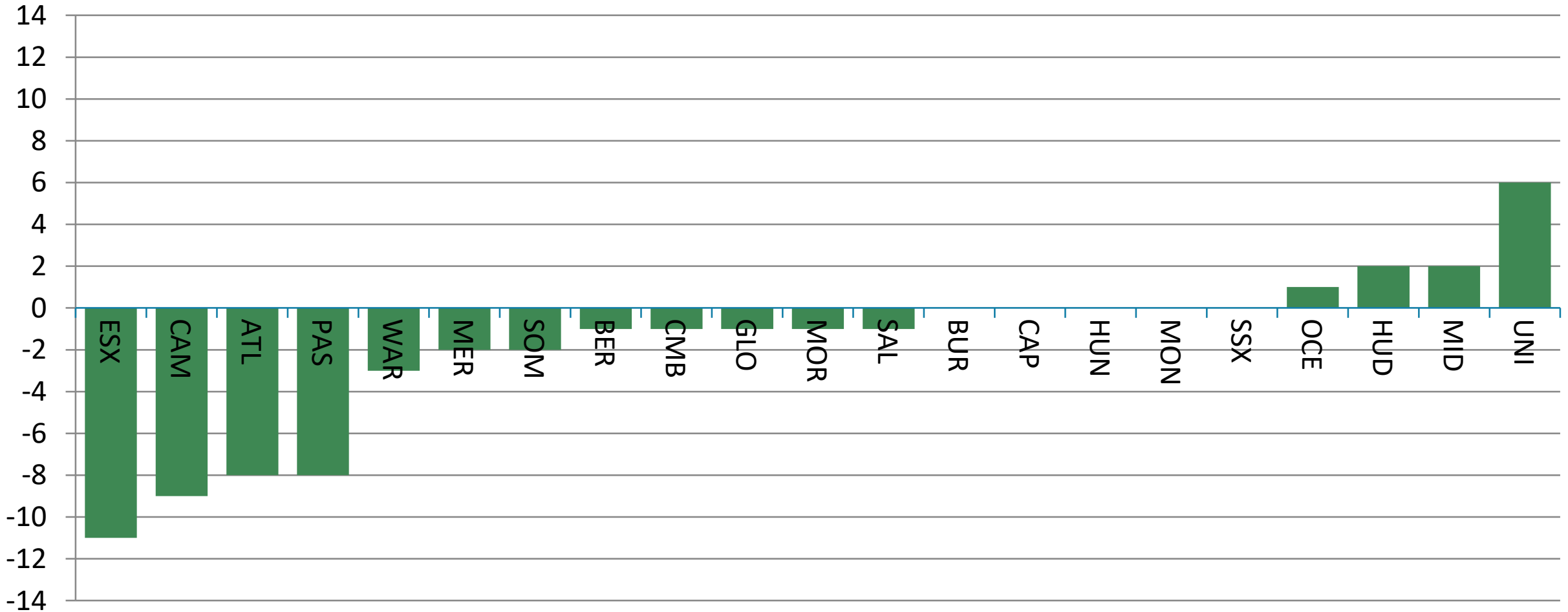
In 2017, 80 youth were the subject of a waiver request in New Jersey, down from 117 in 2016, a decrease of 32%. In 2016, Camden (23) had the most waiver requests, followed by Passaic (17). In 2017, Camden (14) had the most waiver requests, followed by Mercer and Middlesex (11 each).

Fig 1. # of Youth for Whom a Waiver was Requested, by County, 2016 & 2017



From 2016 to 2017, 12 counties saw a decrease in the number of youth experiencing a waiver request, with Essex seeing the largest decrease (-11 youth), followed by Camden (-9 youth). Four counties saw an increase, with the largest increase occurring in Union (+6 youth).

Fig 2. Change in # of Youth for Whom a Waiver was Requested, by County, 2016 to 2017



During 2016-2017, 76% of waiver requests were for 1st degree offenses. Robbery was the most common offense type for which a waiver was requested (34%), followed by homicide (29%).

Fig 3. Degree of Offense

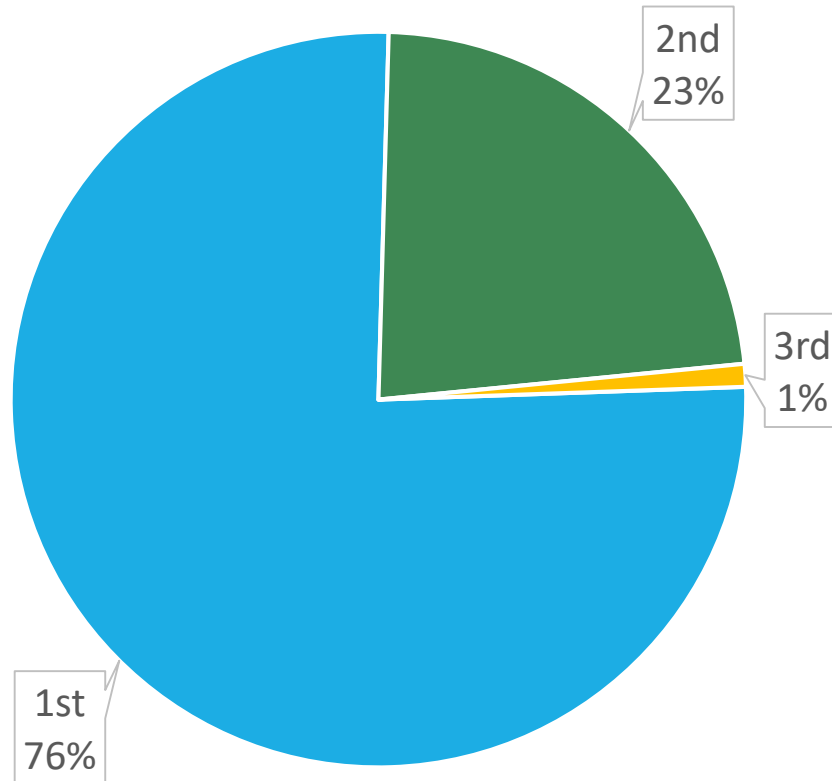
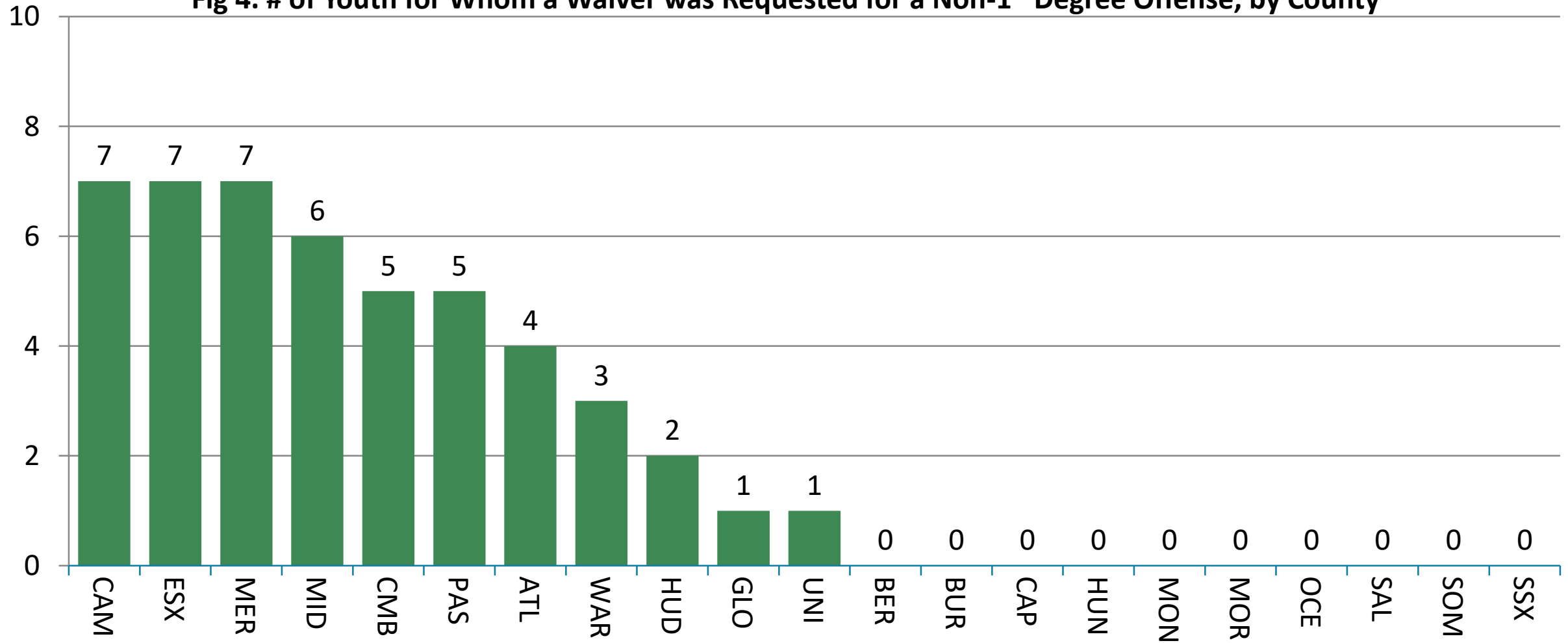


Table 1. Offense Type and Degree*	**%	#
1 st Degree Homicide	29%	57
2 nd Degree Homicide	.5%	1
1 st Degree Aggravated Sexual Assault	11%	22
2 nd Degree Sexual Assault	2%	3
1 st Degree Carjacking	3%	5
1 st Degree Robbery	31%	61
2 nd Degree Robbery	4%	7
1 st Degree Offenses Against Family/Children	.5%	1
1 st Degree Gang Criminality	2%	3
2 nd Degree Aggravated Assault	14%	28
2 nd Degree Weapons	4%	7
3 rd Degree Burglary	.5%	1
3 rd Degree False Public Alarm	.5%	1
TOTAL	100%	197

*Throughout the report categories of offenses listed include attempt or conspiracy to commit the offense. **Throughout the report, numbers may not add to 100% due to rounding; percentages are rounded to whole numbers for ease of reading, except for figures less than 1% which are rounded to .5% or 1%, as appropriate.

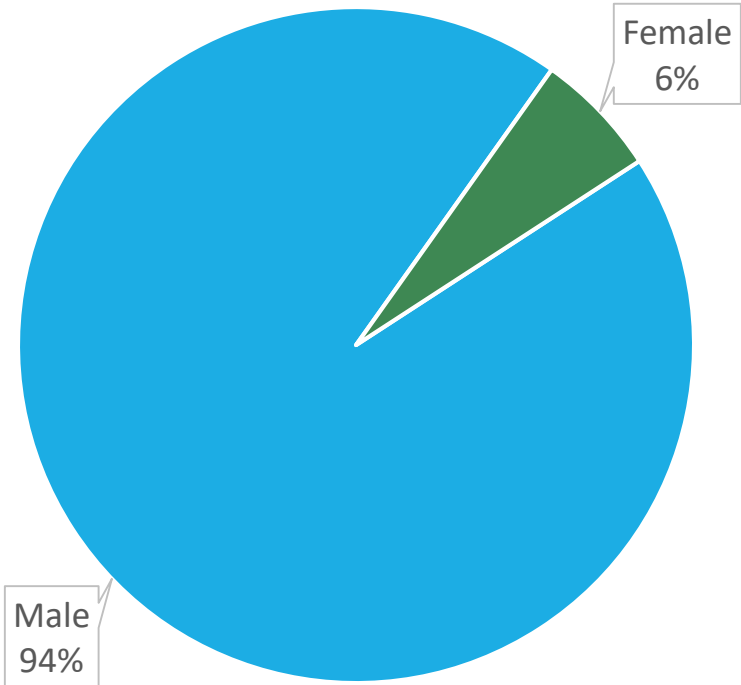
During 2016-2017, in ten counties, waivers were only requested for 1st degree offenses (i.e., the most serious offenses).

Fig 4. # of Youth for Whom a Waiver was Requested for a Non-1st Degree Offense, by County



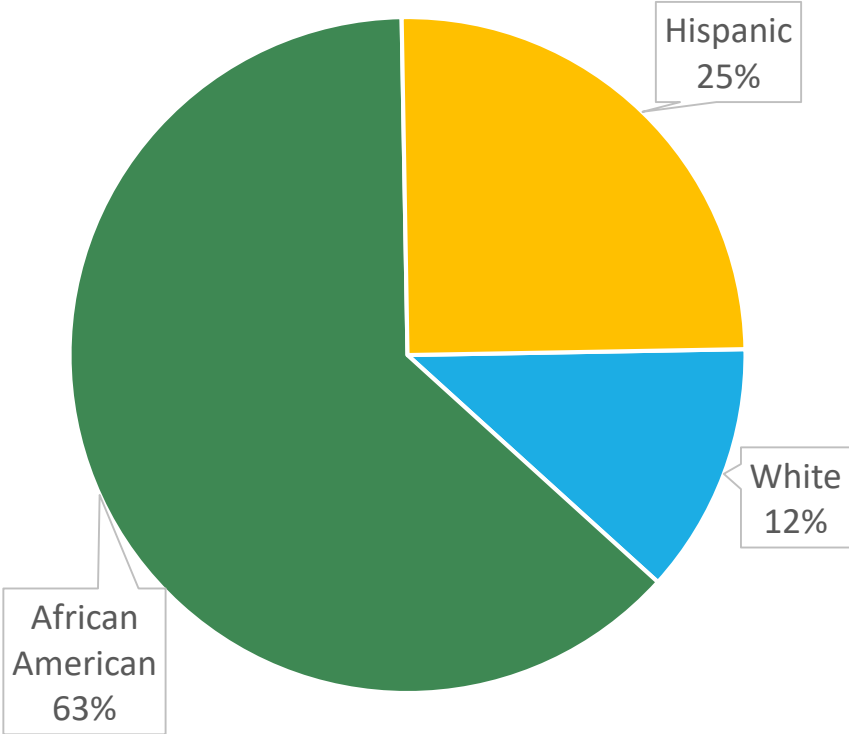
During 2016-2017, the majority of waivers requested were for males (94%) and African-American youth (63%).

Fig 5. Gender



In Camden, waivers were requested for 5 females; in six additional counties, a waiver was requested for 1 female (Bergen, Burlington, Cumberland, Mercer, Middlesex, Monmouth).

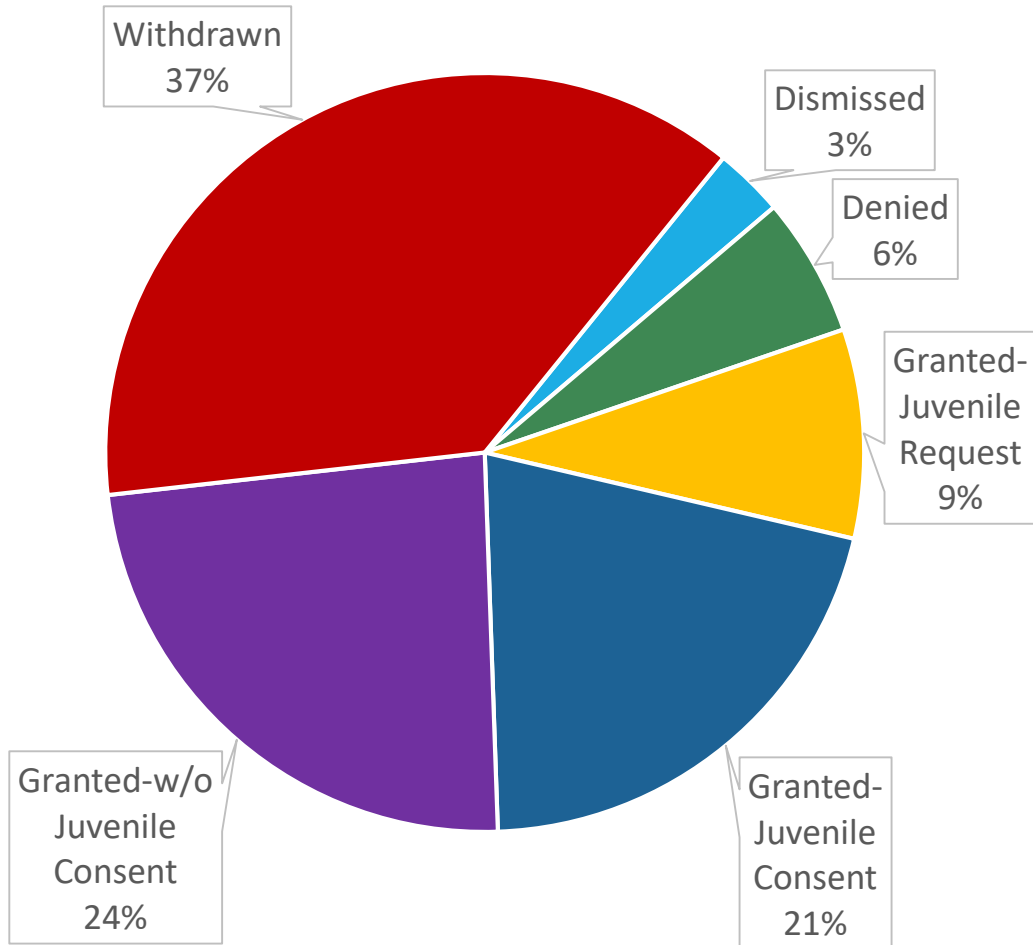
Fig 6. Race/Ethnicity



The only county where white youth comprised a majority of waiver requests was Salem (100%, 1 youth). Hispanic youth comprised a majority of waiver requests in Morris and Ocean (100%, 1 youth each), Bergen (67%, 2 youth), and Middlesex (65%, 13 youth).

During 2016-2017, 54% of waivers requested were granted, and 46% were withdrawn, dismissed, or denied.

Fig 7. Result of Waiver Requests*



- More than one-third (37%) of waiver requests were later withdrawn, 3% were dismissed, and 6% were denied by the judge.
- One-quarter (24%) of waiver requests were granted without the juvenile's consent, 21% were granted with the juvenile's consent, and 9% were granted at the juvenile's request.

*1 case was transferred to another county, where it did not continue as a waiver case. That case is excluded here and in the next 2 slides.

Considering counties with more than one waiver request, the counties with the most waiver requests withdrawn, dismissed, or denied were Atlantic (88%), Essex (81%), and Cumberland (73%).

Table 2.	ATL	BER	BUR	CAM	CMB	ESX	GLO	HUD	MER	MID	MON	MOR	OCE	PAS	SAL	SOM	UNI	WAR	Total
Dismissed	0	0	0	0	2	1	1	0	0	1	0	0	0	0	0	0	0	0	5
	0%	0%	0%	0%	13%	5%	100%	0%	0%	5%	0%	0%	0%	0%	0%	0%	0%	0%	3%
Denied	5	0	0	1	0	2	0	0	4	0	0	0	0	0	0	0	0	0	12
	31%	0%	0%	3%	0%	10%	0%	0%	17%	0%	0%	0%	0%	0%	0%	0%	0%	0%	6%
Granted- Juv Request	0	0	0	3	1	0	0	0	2	5	0	0	0	0	0	0	6	0	17
	0%	0%	0%	8%	7%	0%	0%	0%	9%	25%	0%	0%	0%	0%	0%	0%	60%	0%	9%
Granted- Juv Consent	1	1	1	7	0	2	0	0	4	8	1	0	0	14	0	1	0	1	41
	6%	33%	25%	19%	0%	10%	0%	0%	17%	40%	50%	0%	0%	54%	0%	50%	0%	33%	21%
Granted- w/o Juv Consent	1	1	3	11	3	2	0	9	8	3	1	0	1	2	1	1	0	0	47
	6%	33%	75%	30%	20%	10%	0%	90%	35%	15%	50%	0%	100%	8%	100%	50%	0%	0%	24%
With- drawn	9	1	0	15	9	14	0	1	5	3	0	1	0	10	0	0	4	2	74
	56%	33%	0%	41%	60%	67%	0%	10%	22%	15%	0%	100%	0%	39%	0%	0%	40%	67%	38%
Total	16	3	4	37	15	21	0	10	23	20	2	1	1	26	1	2	10	3	196
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

In 2016-2017, an average of 78 days elapsed between case docketing and the waiver request, which is longer than the newly extended 60-day standard, with 43% of cases exceeding the 60-day standard.*

Fig 8. # of Days between Case Docketing and Waiver Request, by Result of Request, 2016-2017

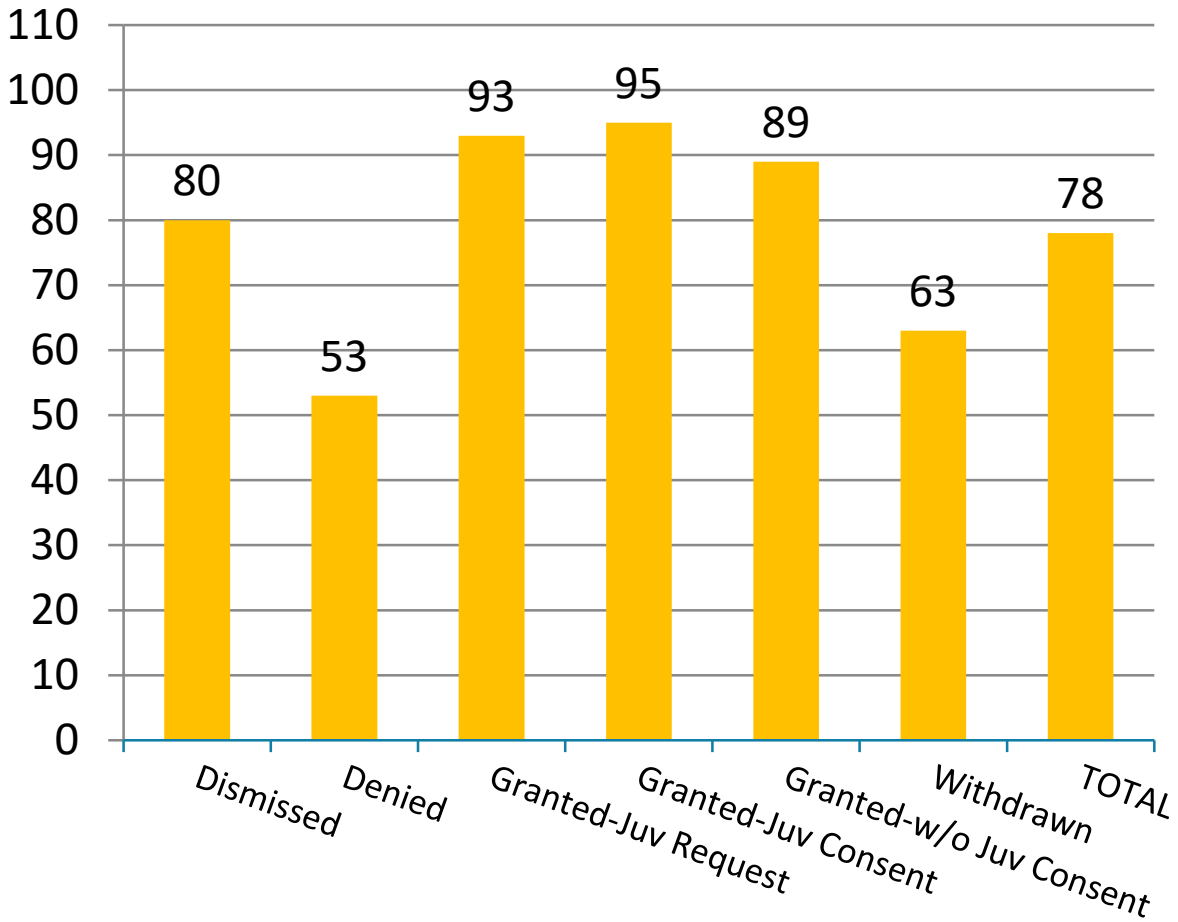
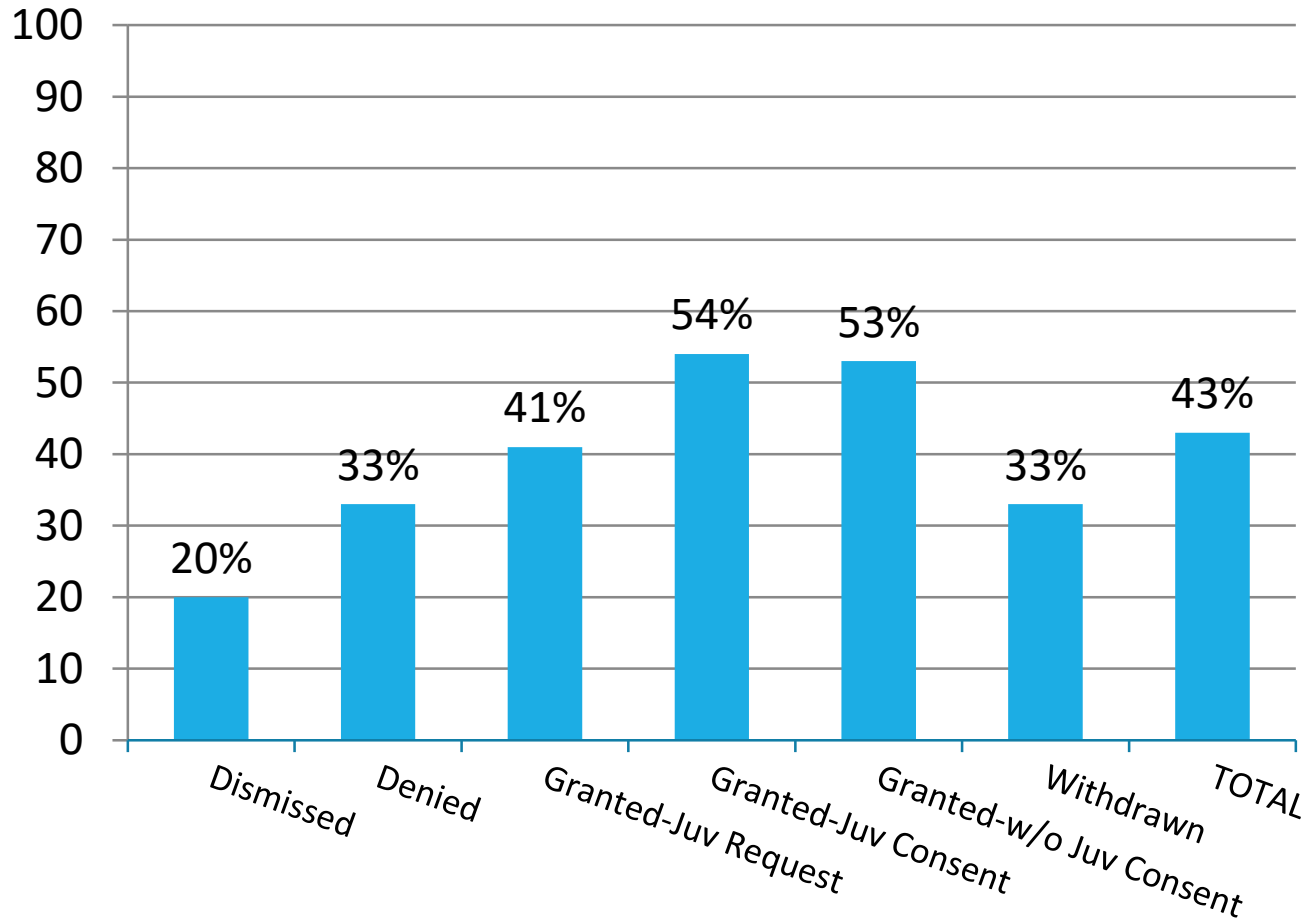


Fig 9. % of Cases where Case Docketing to Waiver Request exceeded 60 Days, by Result of Request, 2016-2017

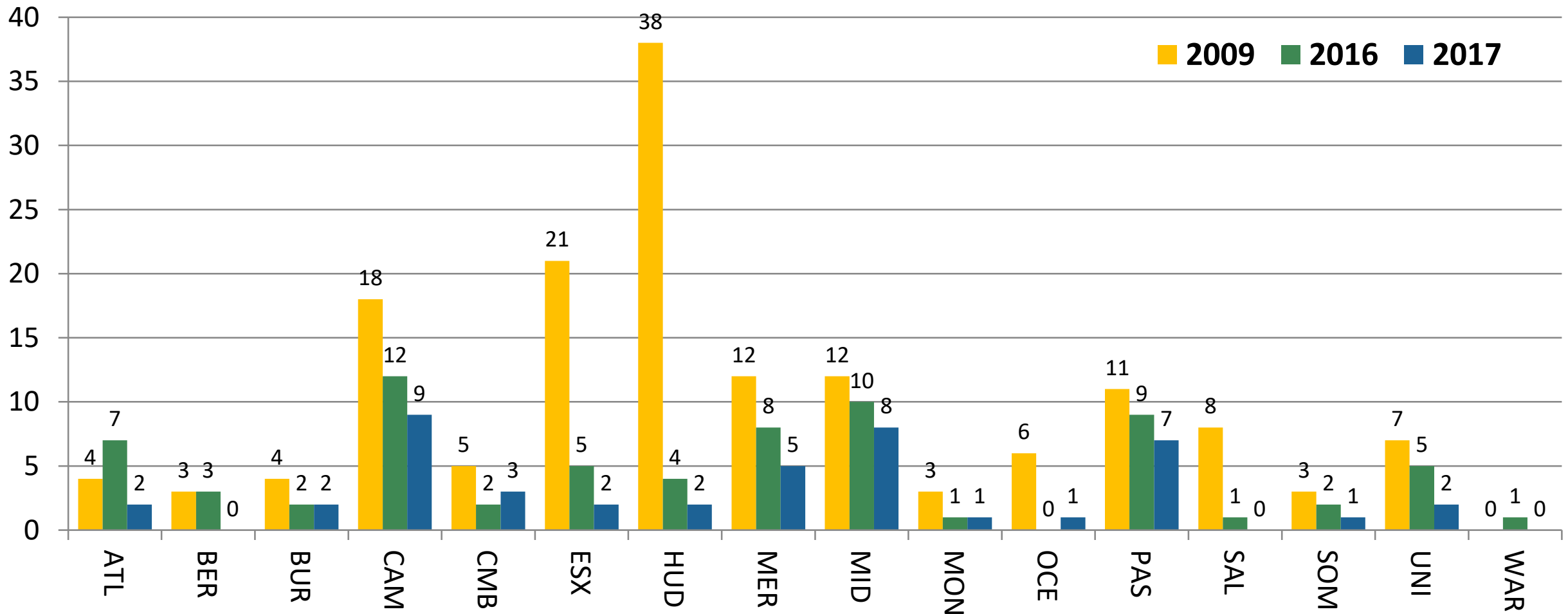


*In addition to the excluded transfer case noted earlier, another case is excluded here because a failure to appear warrant was active for a couple of years, leading to a long delay between the date the case was docketed and the date the waiver was requested, following apprehension on the warrant.

Waiver Requests Granted 2016-2017

In 2017, 45 youth were waived to criminal court, down from 72 in 2016 (-38%) and 155 in 2009* (-71%). In 2017, Camden (9), Middlesex (8), and Passaic (7) had the most youth waived.

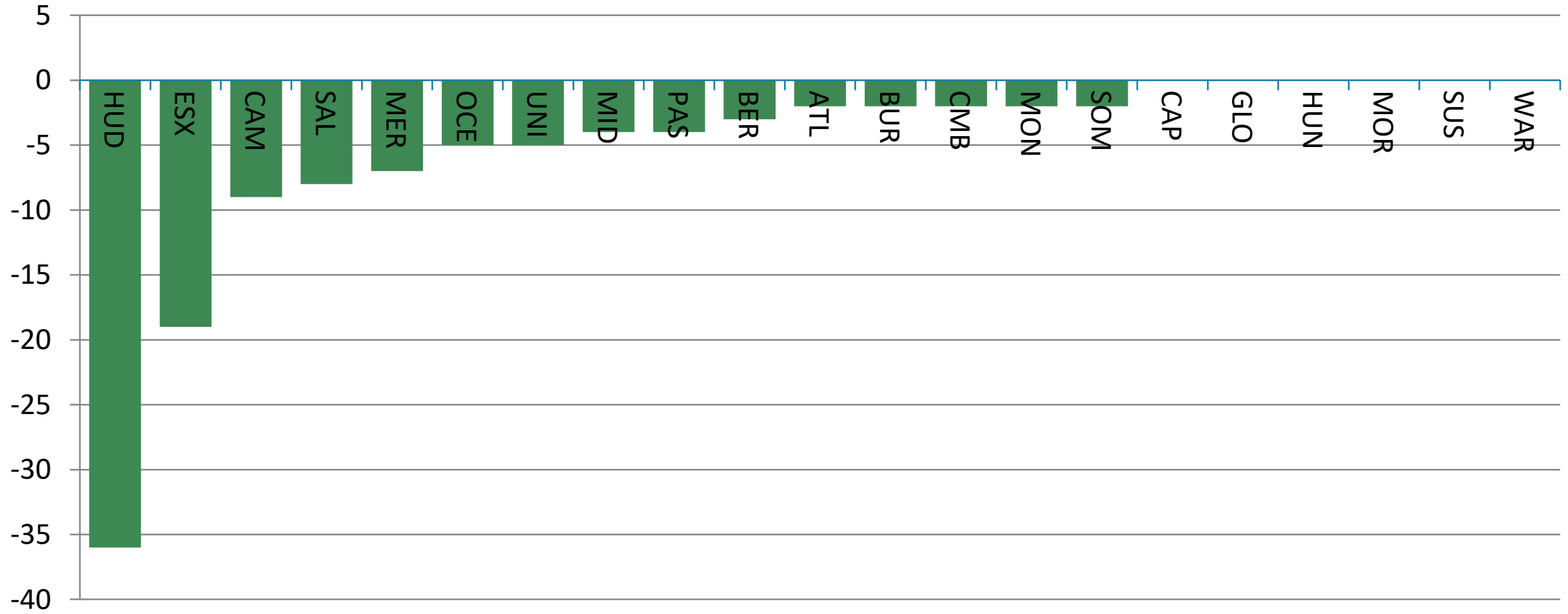
Fig 10. # of Youth Waived to Adult Criminal Court, by County, 2009, 2016, 2017**



*In 2009 a comprehensive analysis of waivers granted was completed, and therefore data for 2009 were verified and can serve as a baseline year. **Counties with zero youth waived all three years are excluded from the graph (Cape May, Gloucester, Hunterdon, Morris, and Sussex).

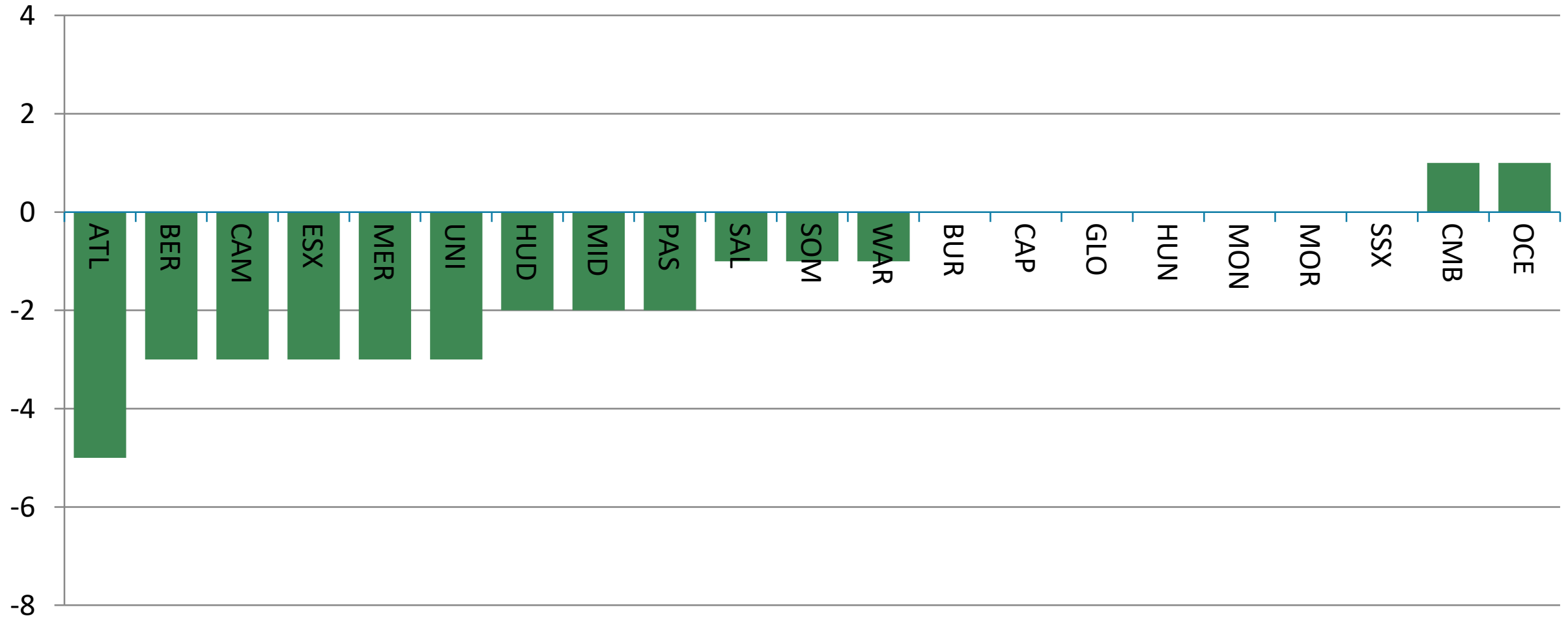
From 2009 to 2017, 15 counties saw a decrease in the number of youth waived to criminal court, with Hudson seeing the largest decrease (-36 youth), followed by Essex (-19 youth).

Fig 11. Change in # of Youth Waived to Adult Criminal Court, by County, 2009 to 2017



From 2016 to 2017, 12 counties saw a decrease in the number of youth waived to criminal court, with Atlantic seeing the largest decrease (-5 youth).

Fig 12. Change in # of Youth Waived to Adult Criminal Court, by County, 2016 to 2017



During 2016-2017, 79% of waivers granted were for 1st degree offenses. Homicide was the most common offense type for which a waiver was granted (41%), followed by robbery (24%).

Fig 13. Degree of Offense

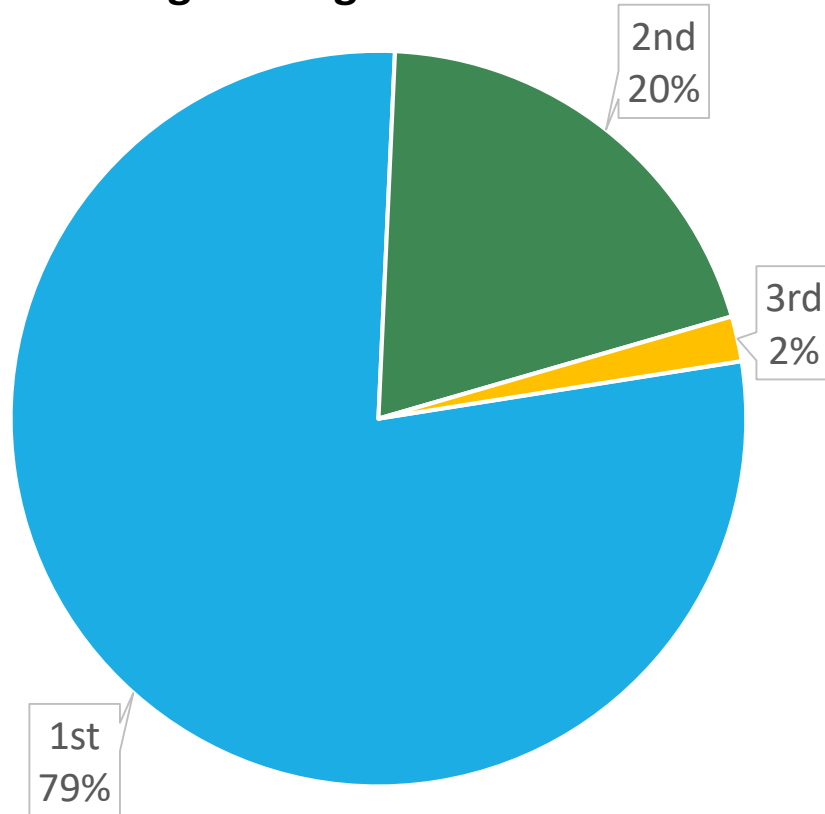
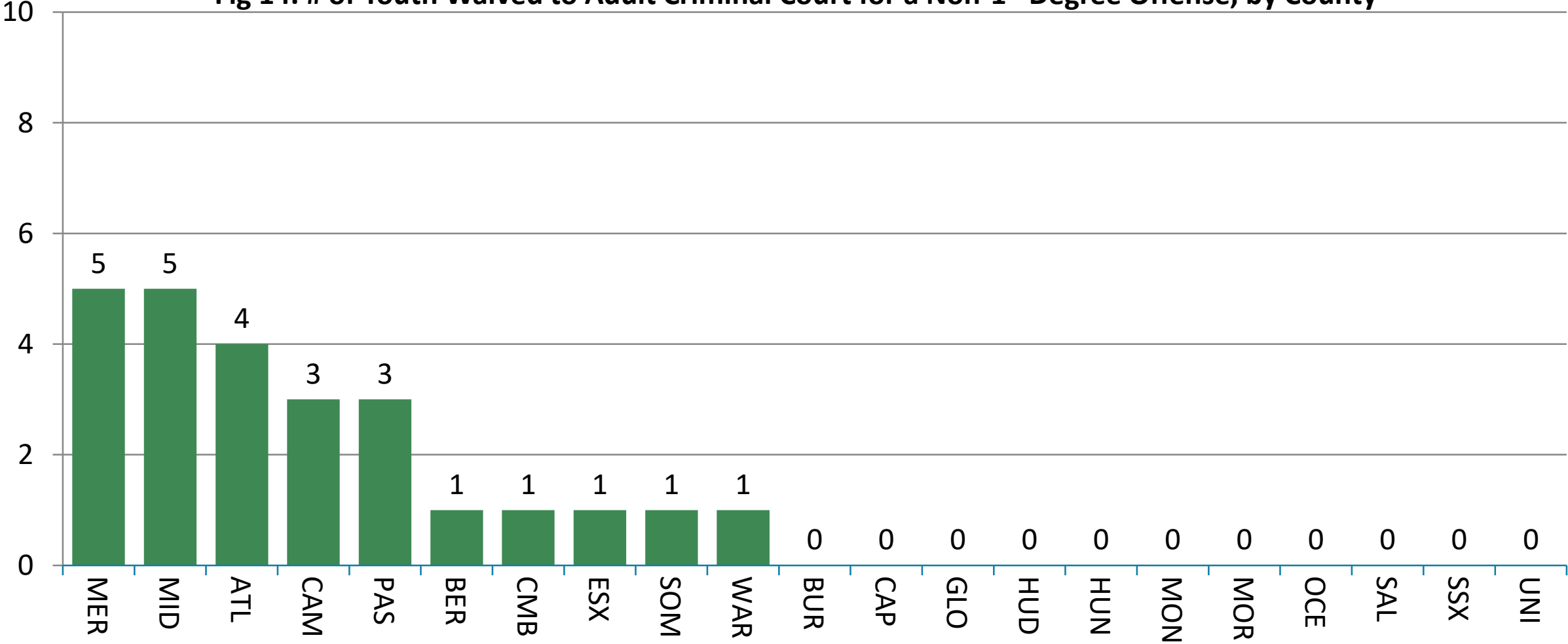


Table 3. Offense Type and Degree	%	#
1 st Degree Homicide	40%	47
2 nd Degree Homicide	1%	1
1 st Degree Aggravated Sexual Assault	8%	9
2 nd Degree Sexual Assault	2%	2
1 st Degree Carjacking	5%	6
1 st Degree Robbery	22%	26
2 nd Degree Robbery	2%	2
1 st Degree Offense: Other Persons	1%	1
1 st Degree Gang Criminality	3%	3
2 nd Degree Aggravated Assault	8%	9
2 nd Degree Weapons	6%	7
2 nd Degree Aggravated Arson	1%	1
2 nd Degree Eluding	1%	1
3 rd Degree Burglary	1%	1
3 rd Degree False Public Alarm	1%	1
TOTAL	100%	117

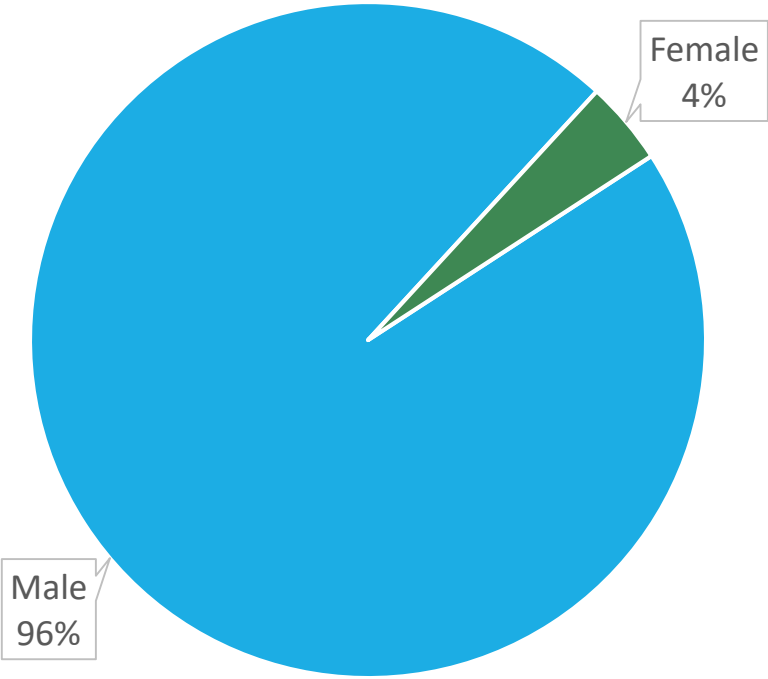
In 2016-2017, in eleven counties, no youth were waived to criminal court for offenses less than the 1st degree.

Fig 14. # of Youth Waived to Adult Criminal Court for a Non-1st Degree Offense, by County



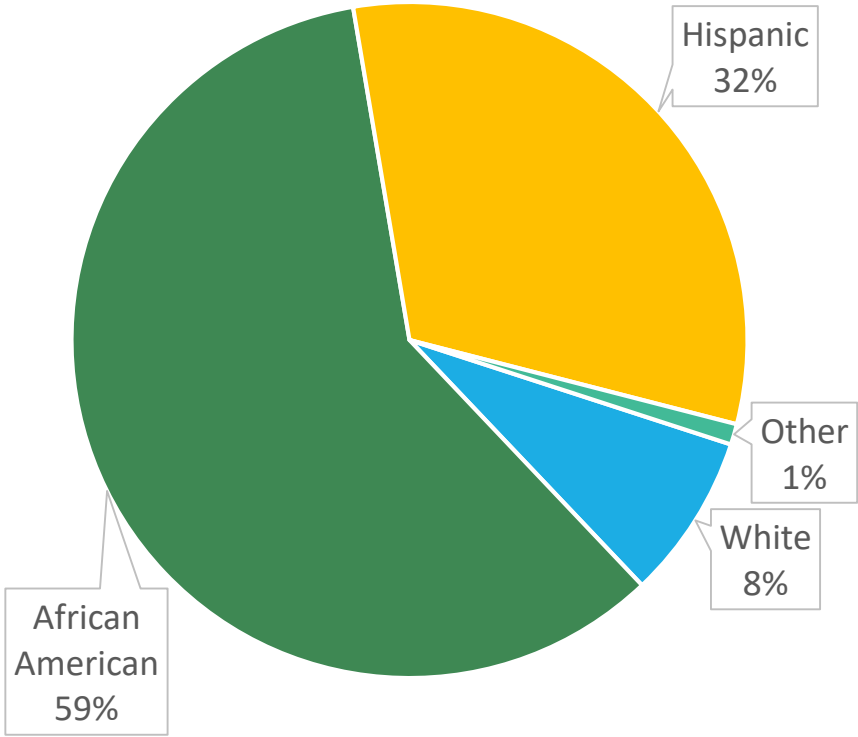
During 2016-2017, the majority of waivers granted were for males (96%) and African-American youth (59%).

Fig 15. Gender



In Camden, 2 females were waived to criminal court, and 1 female was waived in Burlington, Cumberland, and Monmouth.

Fig 16. Race/Ethnicity



The only county where white youth comprised a majority of waivers granted was Salem (100%, 1 youth). Hispanic youth comprised a majority of waivers granted in Ocean and Warren (100%, 1 youth each), Bergen (67%, 2 youth), and Middlesex (67%, 12 youth).

When controlling for severity of current offense, considering offenses of the 1st and 2nd degree, some evidence of disparity exists for youth of color relative to white youth.

Fig 17. # of Youth Waived per 100 Youth Charged with 1st/2nd Degree Offenses*

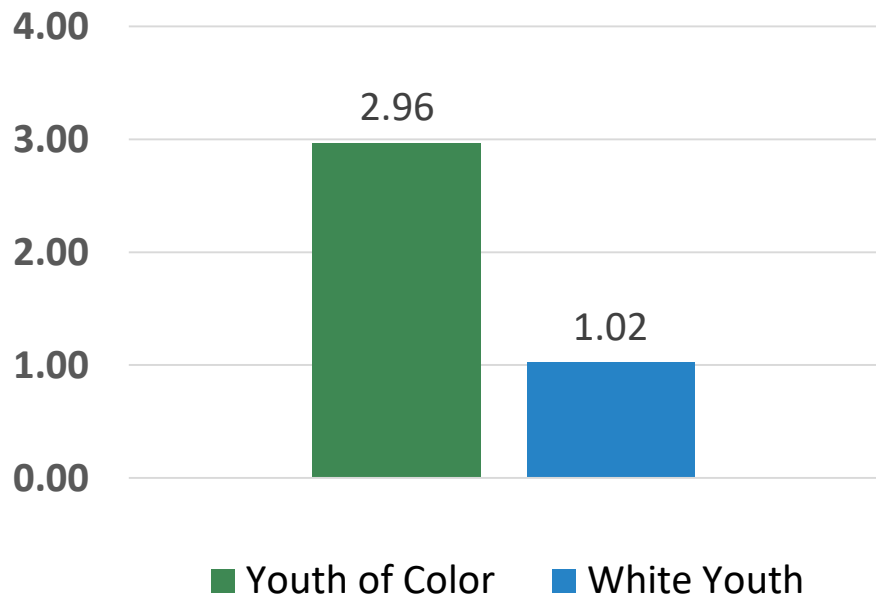
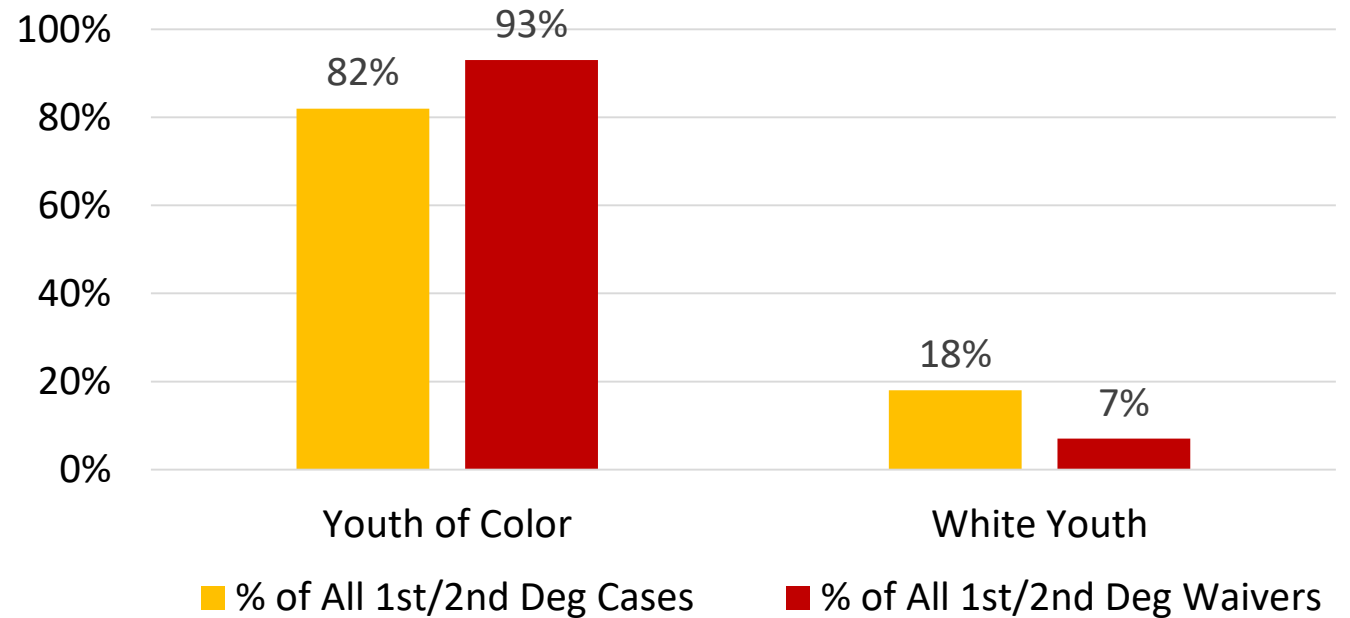


Fig 18. Comparing Representation Among All 1st/2nd Degree Offenses to Representation Among All 1st/2nd Degree Waivers



For every 100 youth of color charged with a 1st/2nd degree offense in court, 2.96 were waived, as compared to 1.02 of every 100 white youth charged with a 1st/ 2nd degree offense. Youth of color comprise 82% of all youth charged with 1st/2nd degree offenses and 93% of all waivers granted for 1st/2nd degree offenses. White youth comprise 18% of all youth charged with 1st/2nd degree offenses, and 7% of all waivers granted for offenses of the 1st/2nd degree. Note that of youth of color waived for 1st/2nd degree offenses, records indicate 13% requested the waiver, as compared to 0% of similarly charged white youth.

*Data regarding all youth charged with 1st/2nd degree offenses in court were provided by the Administrative Office of the Courts.

During 2016-2017, the majority of youth waived to criminal court were 17 years old at the time of the alleged offense (57%). Most youth had one or more prior adjudications (68%), with youth averaging 2.3 prior adjudications.

Fig 19. Age at Time of Alleged Offense*

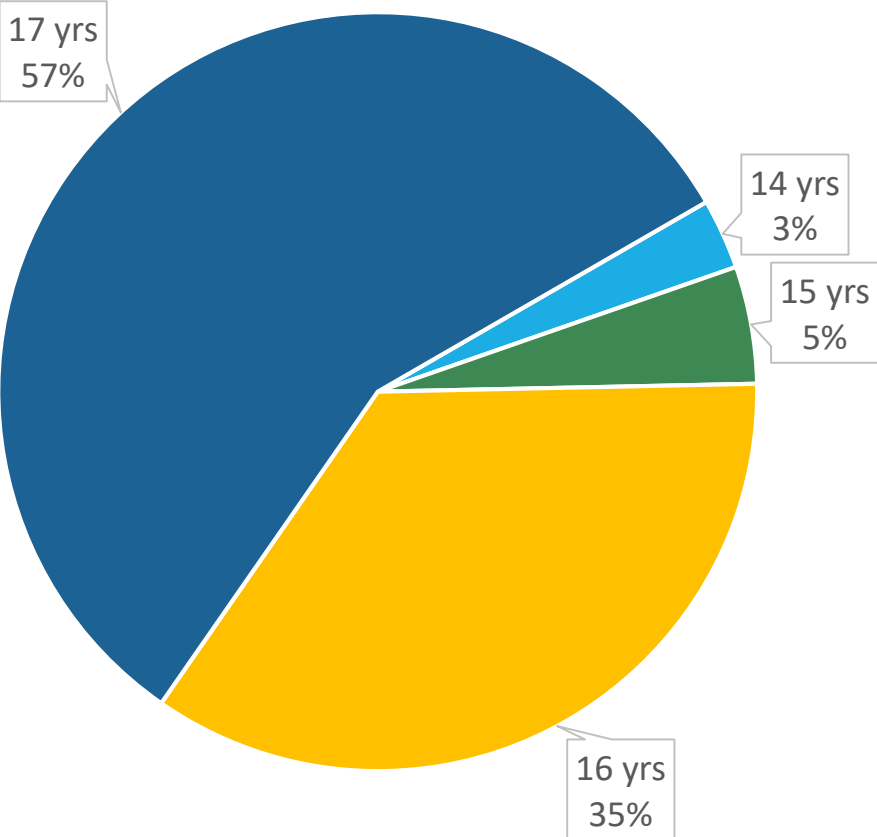
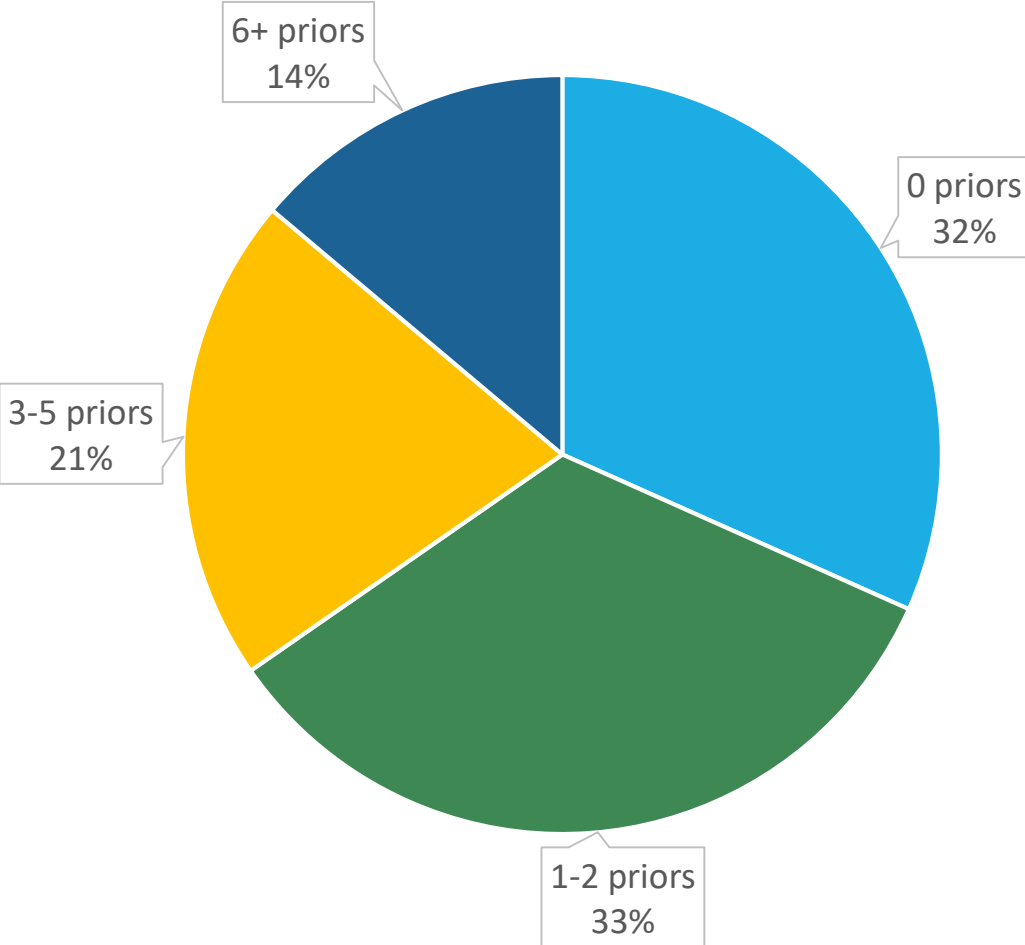


Fig 20. Prior Adjudications

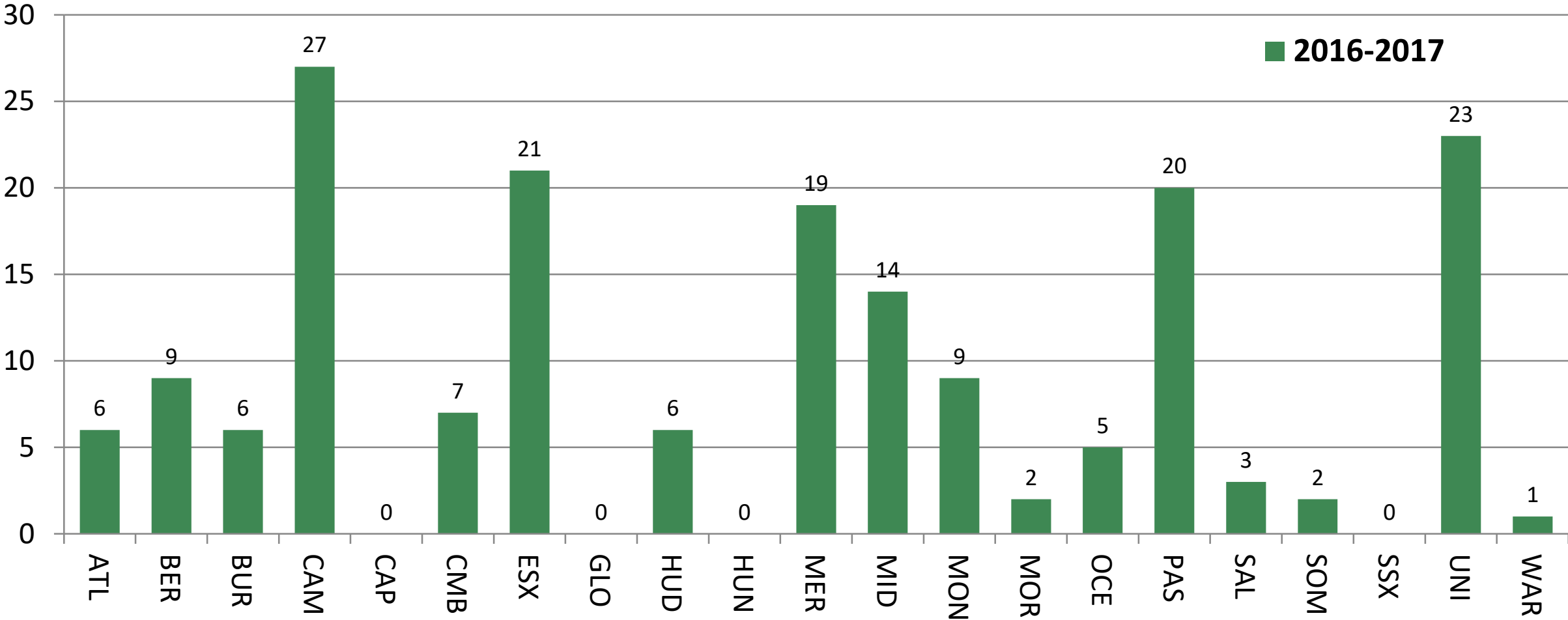


Regarding the 3 waived 14-year olds, for 1 youth the case was filed in juvenile court prior to the new law, and for all 3 youth the offense itself occurred prior to the new law. At the time the waiver was granted, these youth were aged 16, 18, and 21.

Waiver Cases Resolved 2016-2017

During 2016-2017, 180 youth had a waiver case resolved in criminal court.* In 2016, Camden (27) had the most resolved cases during the two-year period, followed by Union (23), Essex (21), Passaic (20), and Mercer (19).

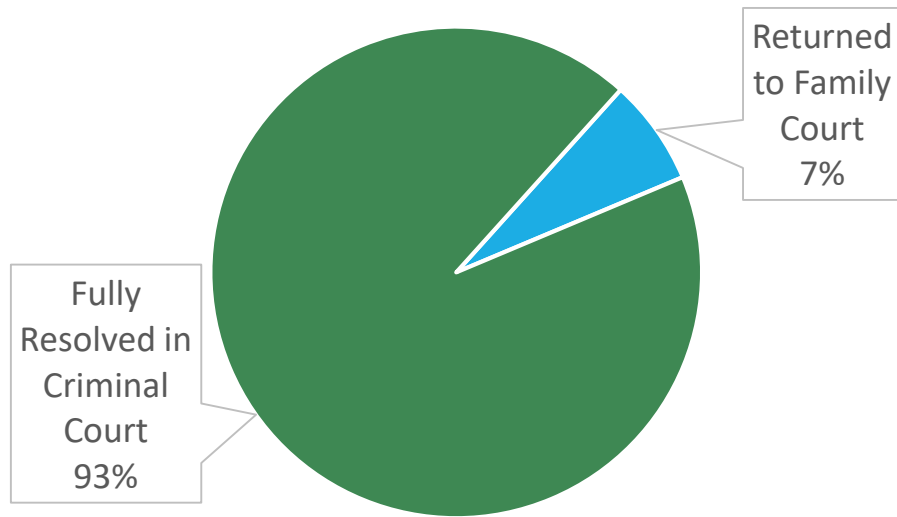
Fig 21. # of Youth with Waiver Cases Resolved in Criminal Court in 2016-2017



*For the purposes of this report, a case is considered resolved in 2016-2017 if the case was dismissed, returned to family court, or resulted in a not guilty finding in 2016-2017, or, for guilty convictions, sentencing occurred in 2016-2017.

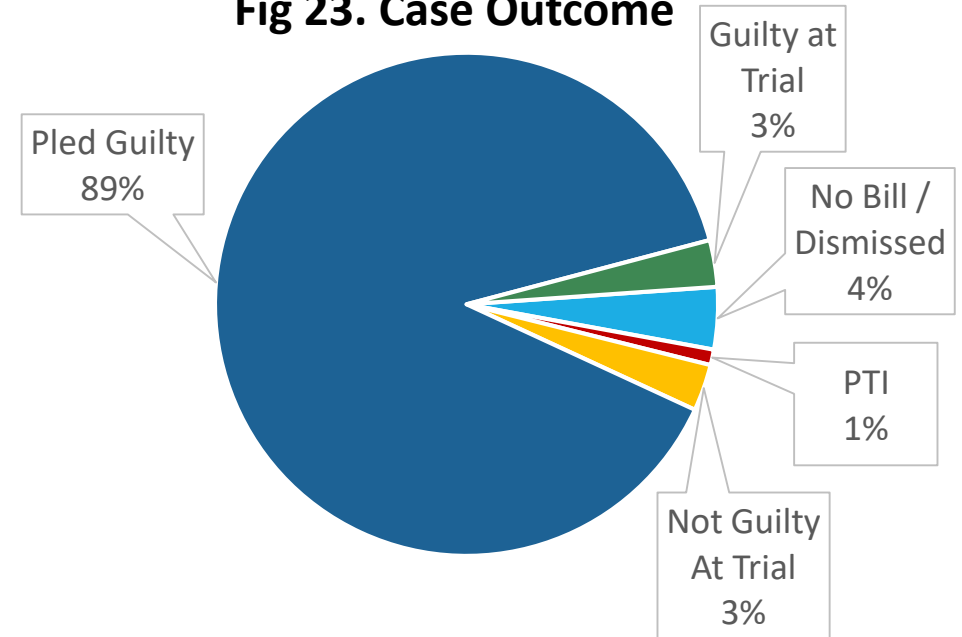
Of the 180 cases, the majority were fully resolved in criminal court (93%), with 7% returned to family court for final disposition, consistent with provisions in the new law. The vast majority of youth pled guilty (89%), with another 3% found guilty at trial; a finding of guilt was not reached in 8% of the cases.

Fig 22. Court of Final Resolution



- The 13 cases returned to family court were in the following counties: Cumberland (3), Bergen, Camden, Mercer (2 each), and Burlington, Hudson, Monmouth, and Union (1 each).
- The dispositions imposed in family court ranged from 6 months of juvenile probation to 3 years of incarceration in a juvenile facility (i.e., commitment to the JJC).

Fig 23. Case Outcome



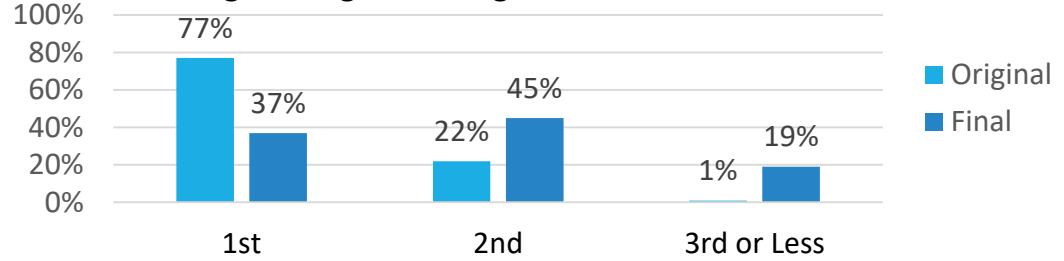
- In 14 cases (8%) a finding of guilt was not reached as the result of “no bill” (failure to indict), dismissal, or successful pre-trial intervention (PTI).
- These cases most commonly occurred in Union (22%, 5 youth) and Mercer (16%, 3 youth).

While 77% of waiver cases resolved in 2016-2017 started out as 1st degree offenses, when considering the final charges at the point of final resolution, this figure drops to 37%. Homicide comprised 33% of charges as originally filed, and 14% of cases as resolved.

Table 4. Offense Type and Degree	Original		Final	
	%	#	%	#
1 st Degree Homicide	32%	58	11%	18
2 nd Degree Homicide	1%	2	4%	6
1 st Degree Aggravated Sexual Assault	11%	19	2%	4
2 nd Degree Sexual Assault	2%	3	2%	4
1 st Degree Kidnapping	1%	2	0%	0
1 st Degree Carjacking	8%	14	3%	5
1 st Degree Robbery	21%	38	19%	32
2 nd Degree Robbery	4%	7	7%	12
1 st Degree Other Offense	4%	7	1%	2
2 nd Degree Aggravated Assault	9%	17	16%	27
2 nd Degree Offenses Against Family/Children	0%	0	.5%	1

Offense Type and Degree (Table 4. continued)	Original		Final	
	%	#	%	#
2 nd Degree Weapons	5%	9	14%	24
2 nd Degree Aggravated Arson	.5%	1	0%	0
2 nd Degree Other Offense	.5%	1	1%	2
3 rd Degree Persons Offense	0%	0	8%	13
3 rd Degree Arson	0%	0	1%	2
3 rd Degree Weapons	0%	0	1%	2
3 rd Degree Other Offense	1%	2	4%	7
4 th Degree Persons Offense	0%	0	2%	4
4 th Degree Other	0%	0	.5%	1
Disorderly Persons	0%	0	.5%	1
TOTAL	100%	180	100%	167

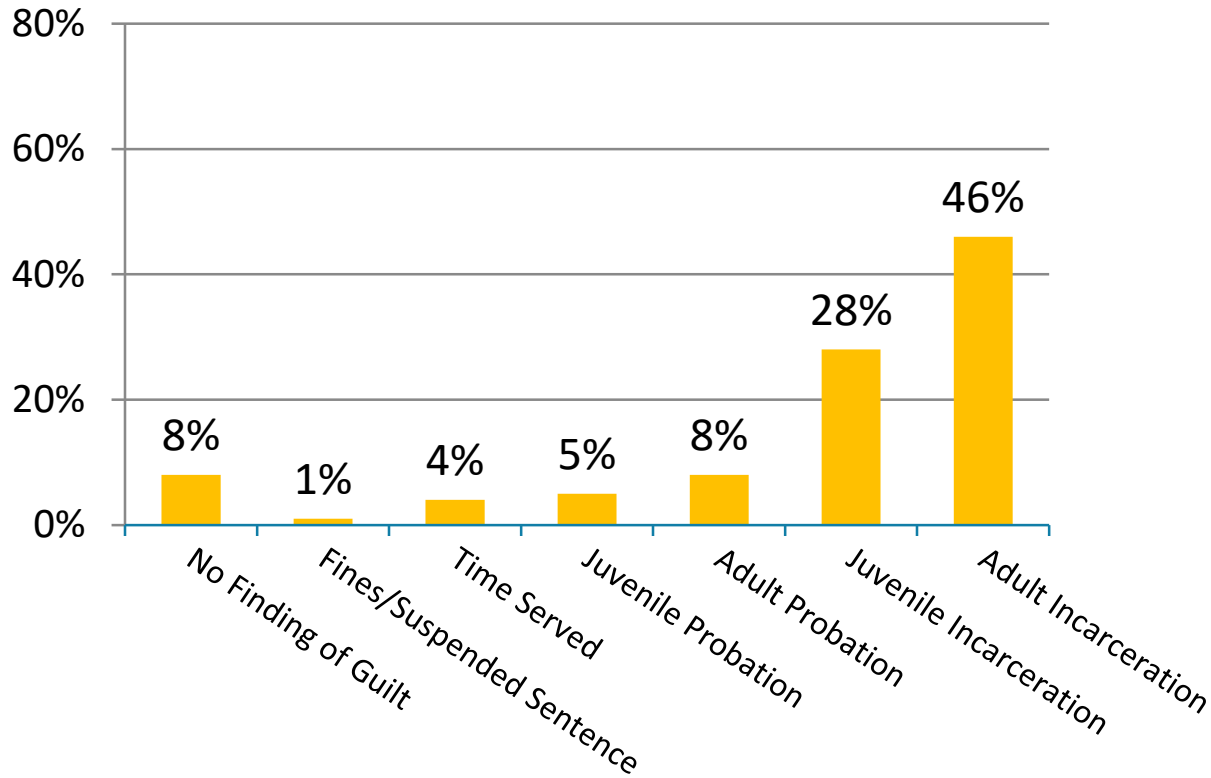
Fig 24. Degree of Original & Final Offenses



- In 49% of the waiver cases, the degree of the final offense resolved represented a downgrading of the degree of the charge as originally filed.

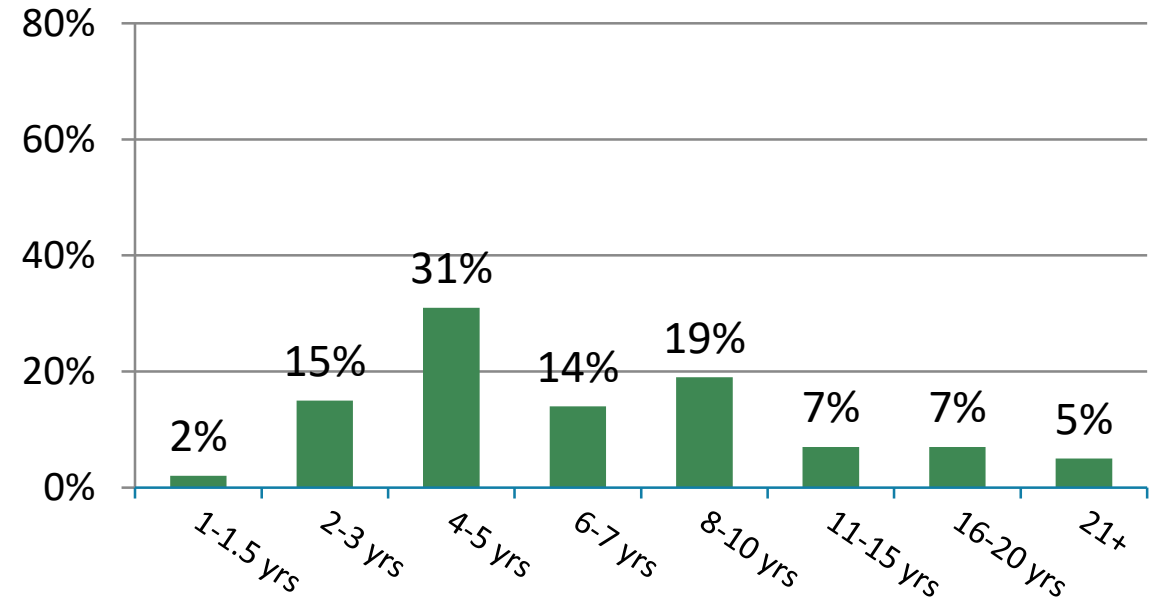
Of the 180 cases, three-quarters (74%) resulted in a term of incarceration either in an adult facility (46%) or a juvenile facility (28%). For the 134 incarcerated youth, the average term length was 8.8 years, ranging from 1 to 55 years.

Fig 25. Final Case Outcome



For the 7 youth sentenced to “time served,” the terms ranged from 199 days to 5 years. In 15 counties, one or more youth were sentenced to incarceration in an adult facility.

Fig 26. Length of Incarceration



The counties with the most youth sentenced to incarceration in an adult facility were: Essex (14), Camden and Union (13 each), and Mercer (10). It is anticipated that in future years, once all cases resolved originated after March 1, 2016 (i.e., after the law took effect), the percentage of cases resulting in incarceration in an adult facility will drop significantly.

Youth with waiver cases resolved in 2016-2017 spent an average of 802 days, or 2.2 years, moving through the court process; for 21% of waived youth, the case process lasted more than 3 years.

Table 5. Average Case Processing Times, in Days, by County

	ATL	BER	BUR	CAM	CMB	ESX	HUD	MER	MID	MON	MOR	OCE	PAS	SAL	SOM	UNI	WAR	Total
Docketed to Waiver Granted	179	168	136	160	178	217	114	165	209	144	162	155	155	115	146	155	79	167
Waiver Granted to Criminal Court Resolution	492	591	326	521	432	969	475	923	391	708	1378	383	460	304	607	766	58	631
TOTAL: Docketed to Final Resolution*	671	776	461	682	654	1186	588	1103	600	851	1540	538	615	419	752	921	137	802

- On average, time from the date the case was docketed in family court to the date the waiver was granted averaged 167 days, or 5.5 months.
- Time from the date the waiver was granted to final criminal court resolution averaged 631 days, or just about 21 months.

*For the 8 cases returned to family court, this total includes time between criminal court resolution and final resolution in family court. In 5 cases this occurred on the same day, and for the 8 cases collectively, this final piece of the case process averaged 57 days.

Conclusions & Recommendations

1. Waiver practice in New Jersey has changed significantly in recent years, in that there has been a substantial reduction in the number of youth waived, from 155 in 2009, to 72 in 2016, to just 45 youth in 2017. This is a positive finding, consistent with the goals of Senate Bill 2003 which became law in March of 2016.
2. Importantly, the findings of this report indicate that in New Jersey, consistent with the intent of Senate Bill 2003, very few younger youth are waived, and most youth who are waived have been charged with very serious offenses.
3. Despite these successes, there is some evidence of disparity between waiver rates for youth of color as compared to white youth that merits attention. Local jurisdictions might consider whether these differences exist after controlling for severity of offense, prior history, or the expressed wishes of the youth (i.e., whether the youth requested the waiver), and otherwise take steps to address any disparity that remains after considering these factors.
4. Additionally, case processing times for youth waived and tried as adults are very lengthy, with more than two years elapsing between the date the case is filed in court and the date of final resolution, and with many cases taking much longer to resolve (e.g., 21% of cases took more than 3 years to resolve).
5. Finally, local jurisdictions should not wait for the next biennial waiver report to assess whether the practice of sentencing youth to terms of incarceration in adult facilities has been reduced in 2018 and 2019, since the presumption is that terms of incarceration for waived youth will be served in a juvenile facility.