

Juvenile Waiver Practice in New Jersey

An Analysis of Waivers Requested, Waivers
Granted, and Waiver Cases Resolved in
Criminal Court in 2018-2019

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

July 2022

Philip D. Murphy, Governor
Sheila Y. Oliver, Lt. Governor
Matthew J. Platkin, Acting Attorney General
Jennifer LeBaron, Ph.D., Acting 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the time to file a waiver motion from 30 to 60 days, arguably reducing the number of waivers filed then subsequently withdrawn;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.

A special thanks to Joelle Kenney, Manager of the Juvenile Justice Commission's JDAI & System Reform Unit, for her excellent work preparing this report.

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 2018 or 2019; 2) all youth for whom a waiver request was granted in 2018 or 2019; and 3) all cases resolved in the Criminal Part in 2018 or 2019 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 2018 and 2019 through to conclusion would not result in a timely report.

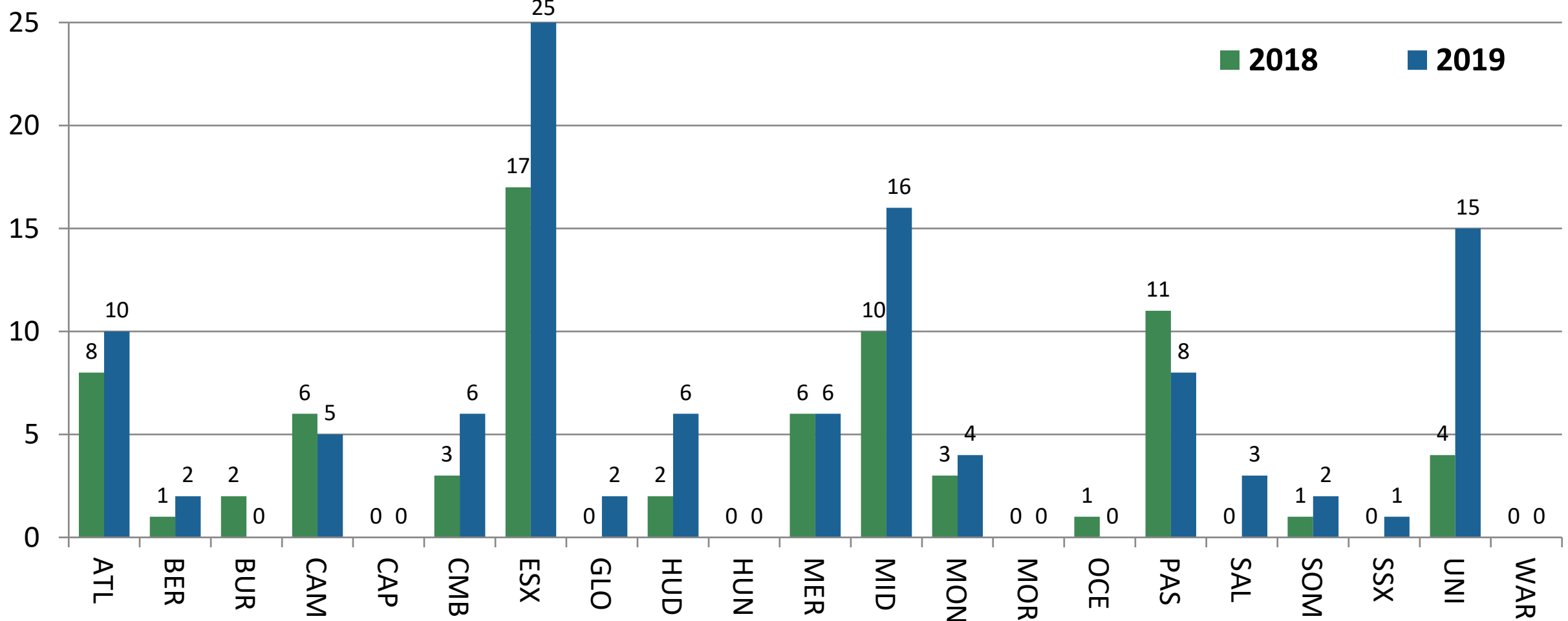
FACTS (the Family Automated Case Tracking System) served as the data source for the first two populations and Promis (Prosecutor's Management Information System)/Gavel served as the data source for the third population. Note that the unit of analysis is the *youth*, and not the *case* (i.e., youth with 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. Again, cases were added or edited based on feedback received through this process.

Waivers Requested 2018-2019

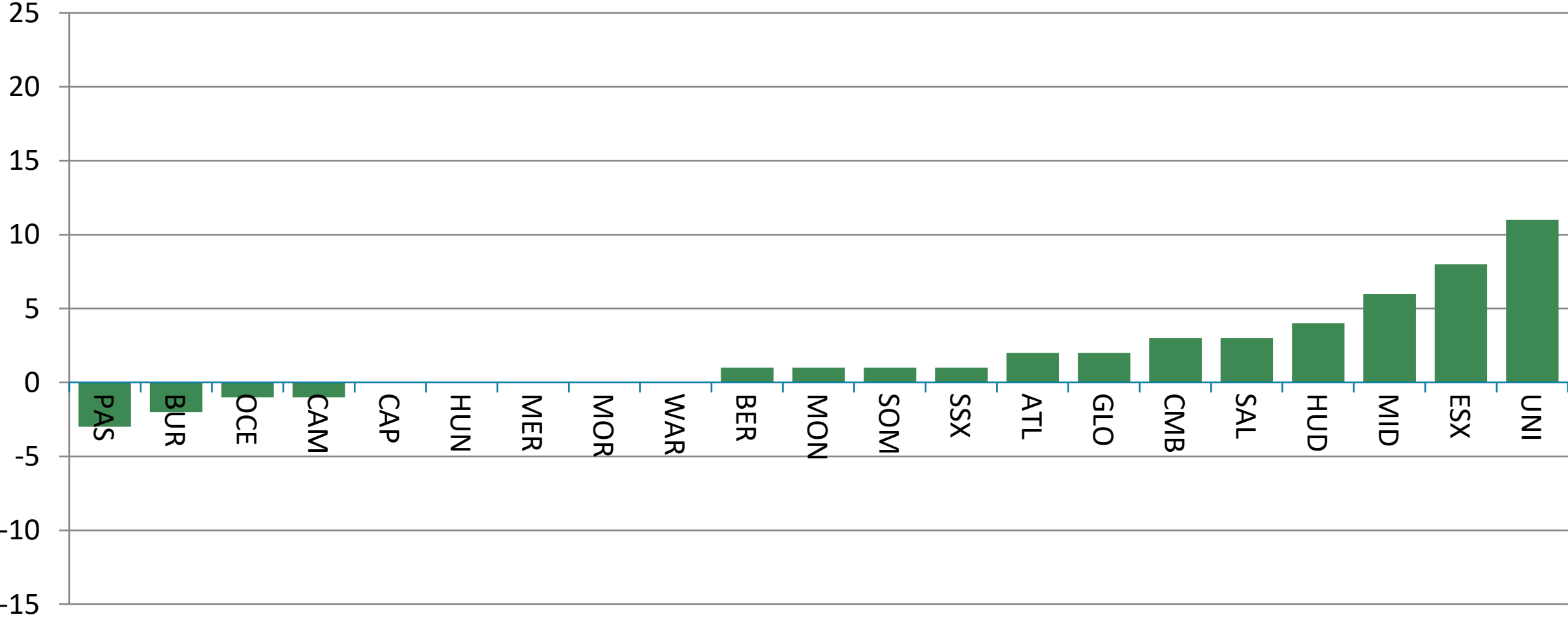
In 2019, 111 youth were the subject of a waiver request in New Jersey, up from 75 in 2018, an increase of 48%. In 2018, Essex (17) had the most waiver requests, followed by Passaic (11) and Middlesex (10). In 2019, Essex (25) had the most waiver requests, followed by Middlesex (16) and Union (15).

Fig 1. # of Youth for Whom a Waiver was Requested, by County, 2018 & 2019



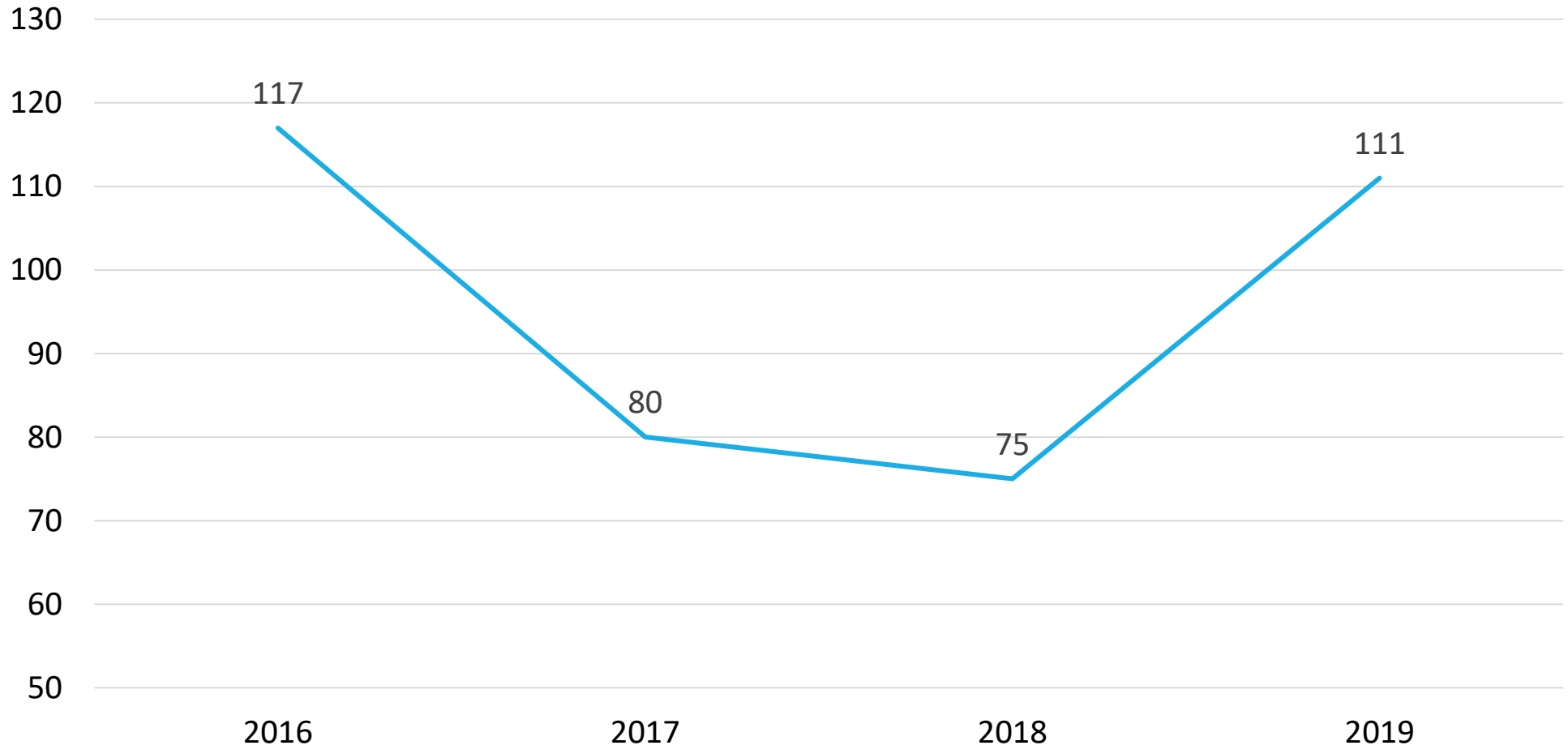
From 2018 to 2019, 4 counties saw a decrease in the number of youth experiencing a waiver request, with Passaic seeing the largest decrease (-3 youth). Twelve counties saw an increase, with the largest increase occurring in Union (+11 youth), followed by Essex (+8 youth).

Fig 2. Change in # of Youth for Whom a Waiver was Requested, by County, 2018 to 2019



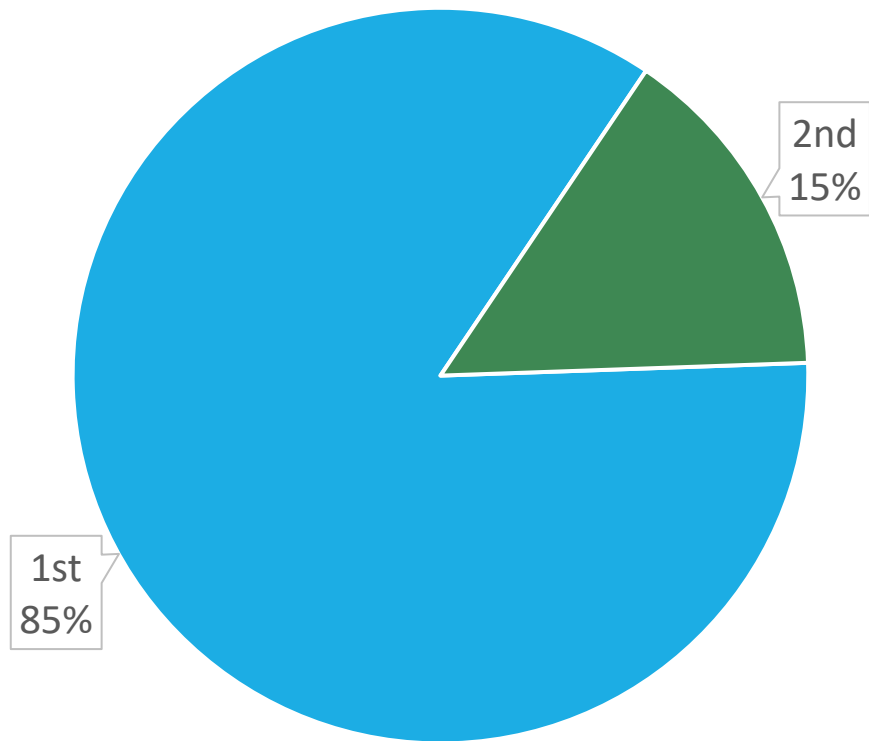
In 2019, 111 youth were the subject of a waiver request in New Jersey, down from 117 in 2016, a decrease of 5%. However, the sharper decrease in waiver requests seen between 2016 and 2017/2018 was not sustained through 2019. While waiver requests decreased 36% from 2016 to 2018 (from 117 to 75), they increased 48% between 2018 and 2019 (from 75 to 111).

Fig 3. # of Youth for Whom a Waiver was Requested, by County, 2016-2019



During 2018-2019, 85% of waiver requests were for 1st degree offenses. Robbery was the most common offense type for which a waiver was requested (33%), followed by homicide (30%).

Fig 4. Degree of Offense



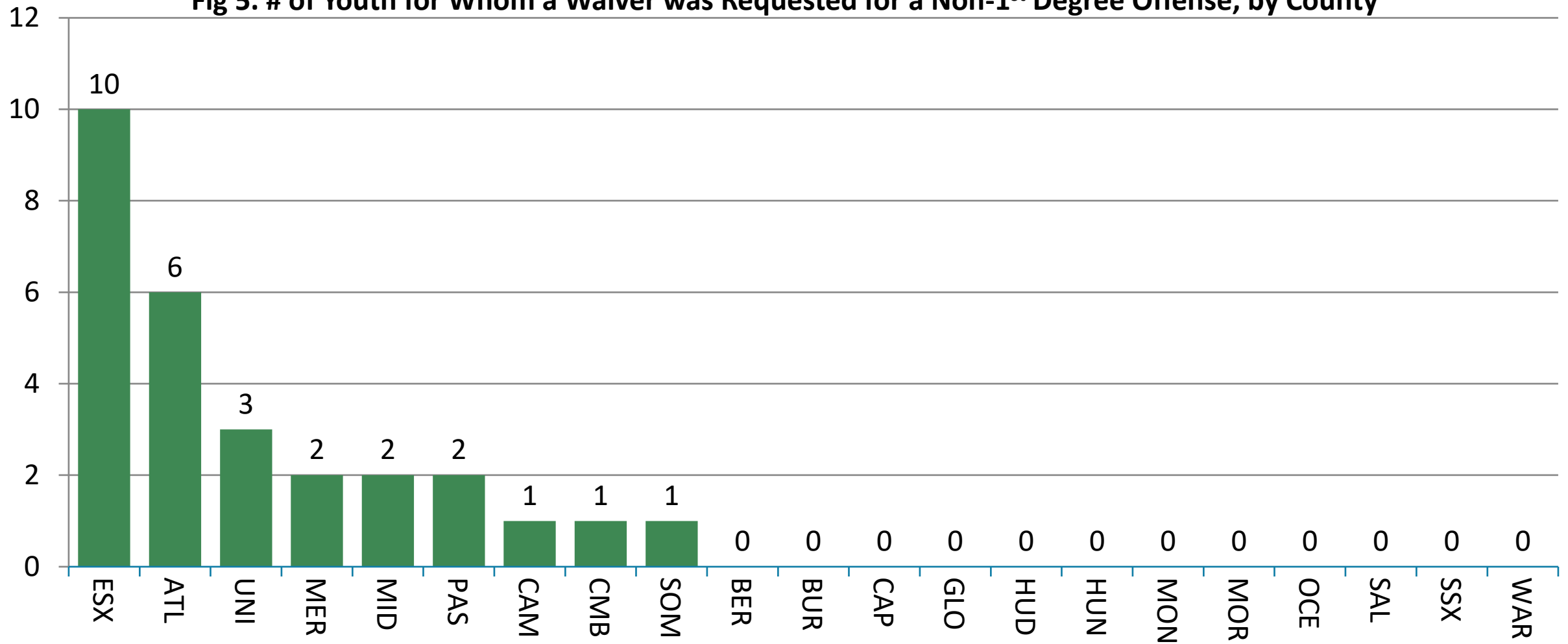
The percentage of waiver requests for something other than a 1st degree offense decreased from 24% in 2016-2017 to 15% in 2018-2019.

Table 1. Offense Type and Degree*	**%	#
1st Degree Homicide	30%	56
1st Degree Aggravated Sexual Assault	11%	20
2nd Degree Sexual Assault	2%	3
1st Degree Kidnapping	3%	6
1st Degree Carjacking	8%	14
1st Degree Robbery	31%	57
2nd Degree Robbery	2%	4
1st Degree Offenses Against Family/Children	.5%	1
1st Degree Gang Criminality	2%	4
2nd Degree Assault-Aggravated	8%	14
2nd Degree Weapons	3%	6
2nd Degree Eluding: Creating Risk of Death/Injury	.5%	1
TOTAL	100%	186

*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.

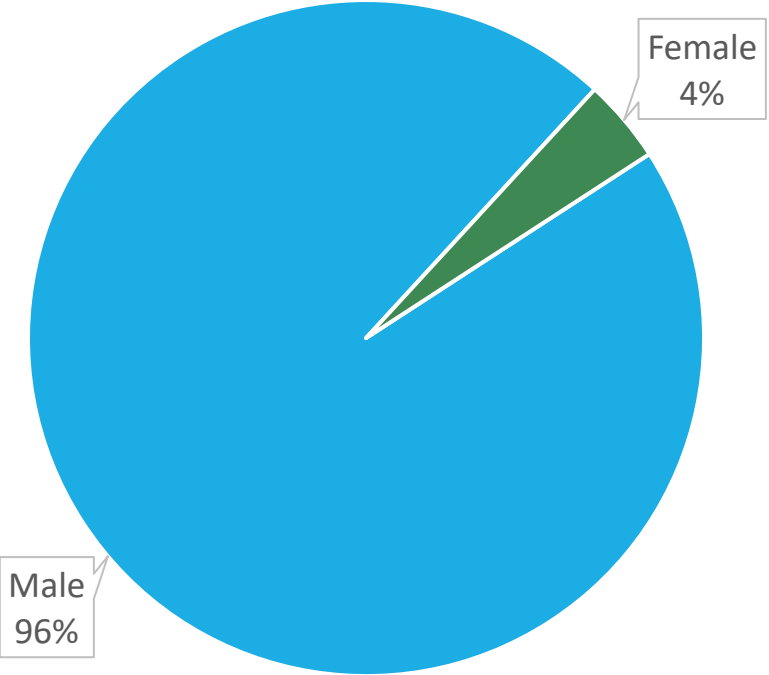
During 2018-2019, in twelve counties, waivers were only requested for 1st degree offenses (i.e., the most serious offenses). The county with the most waivers filed for a non-1st degree offense was Essex (10).

Fig 5. # of Youth for Whom a Waiver was Requested for a Non-1st Degree Offense, by County



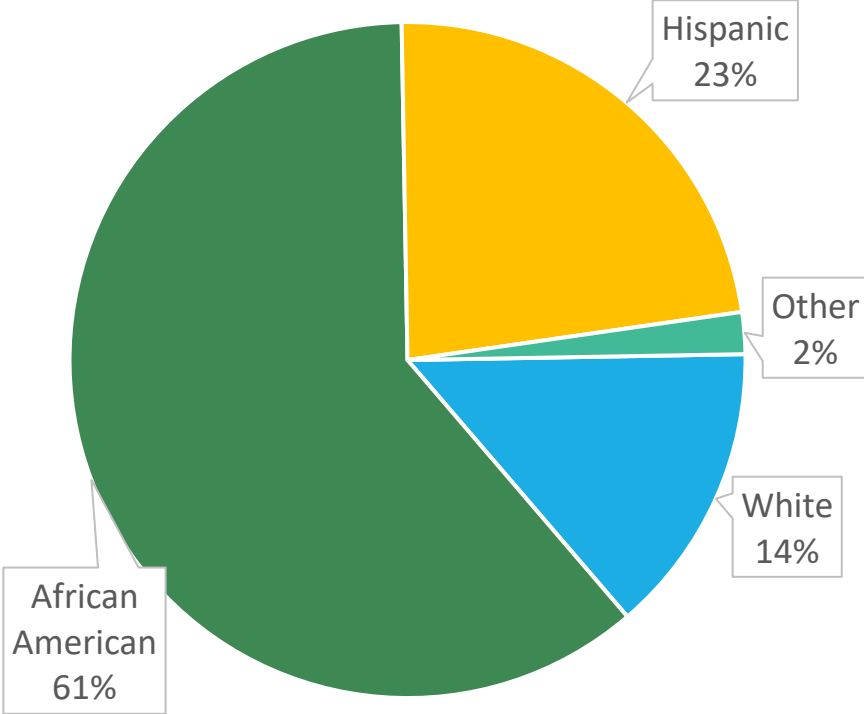
During 2018-2019, the majority of waivers requested were for males (96%) and African-American youth (61%).

Fig 6. Gender



In Essex, waivers were requested for 3 females; in four additional counties, a waiver was requested for 1 female (Cumberland, Monmouth, Passaic and Somerset).

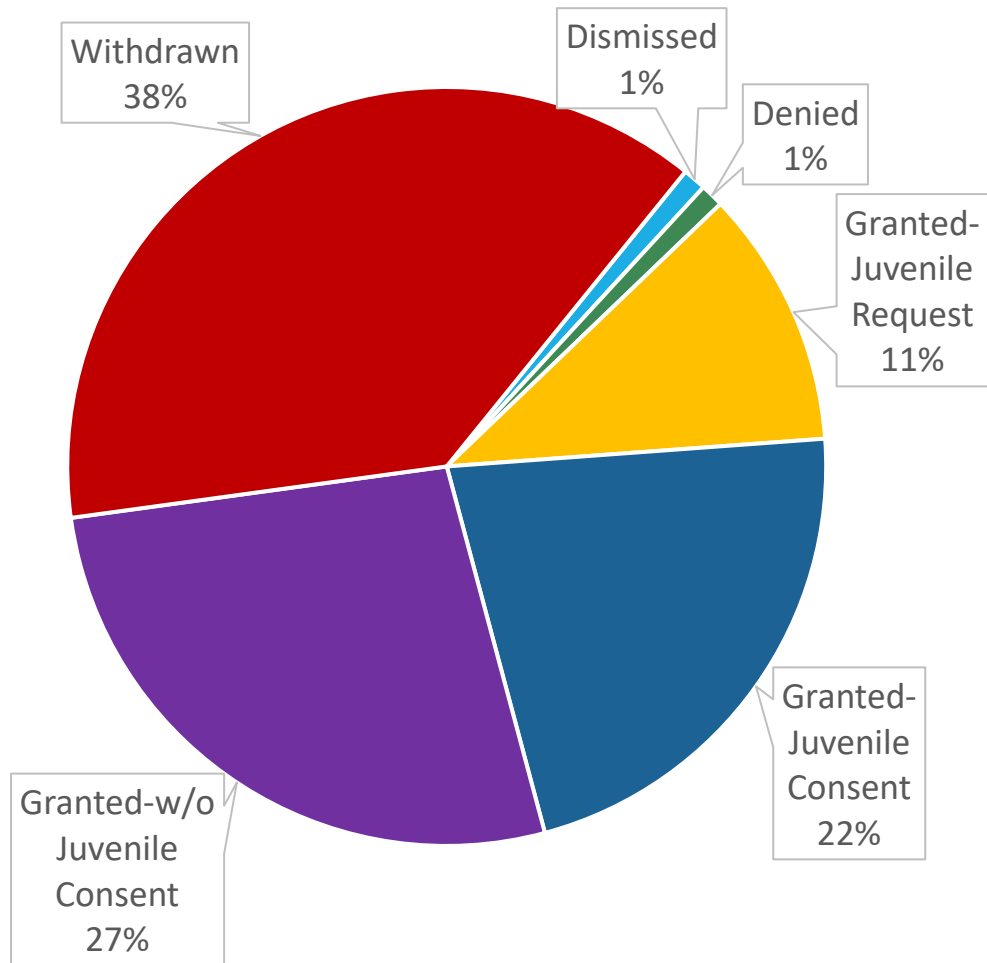
Fig 7. Race/Ethnicity



The only county where white youth comprised a majority of waiver requests was Sussex (100%, 1 youth). Hispanic youth comprised a majority of waiver requests in Middlesex (58%, 15 youth) and Burlington (50%, 1 youth).

During 2018-2019, 60% of waivers requested were granted, and 40% were withdrawn, dismissed, or denied.

Fig 8. Result of Waiver Requests



- More than one-third (38%) of waiver requests were later withdrawn, 1% were dismissed, and 1% were denied by the judge.
- More than one-quarter (27%) of waiver requests were granted without the juvenile's consent, 22% were granted with the juvenile's consent, and 11% were granted at the juvenile's request.

Considering counties with more than one waiver request, the counties with the most waiver requests withdrawn, dismissed, or denied were Sussex (100%, 1 youth), Union (79%, 15 youth), and Essex (74%, 31 youth).

Table 2.	ATL	BER	BUR	CAM	CMB	ESX	GLO	HUD	MER	MID	MON	OCE	PAS	SAL	SOM	SSX	UNN	Total
Dismissed	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	2
	6%	0%	0%	0%	0%	0%	0%	0%	0%	4%	0%	0%	0%	0%	0%	0%	0%	1%
Denied	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
	6%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%
Granted- Juv Request	0	1	0	2	0	2	0	0	2	10	1	0	0	1	0	0	1	20
	0%	33%	0%	18%	0%	5%	0%	0%	17%	39%	14%	0%	0%	33%	0%	0%	5%	11%
Granted- Juv Consent	5	1	2	2	1	3	1	0	1	5	2	0	14	0	2	0	2	41
	28%	33%	100%	18%	11%	7%	50%	0%	8%	19%	29%	0%	74%	0%	67%	0%	11%	22%
Granted- w/o Juv Consent	5	1	0	4	3	6	0	8	5	7	3	1	4	2	1	0	1	51
	28%	33%	0%	36%	33%	14%	0%	100%	42%	27%	43%	50%	21%	67%	33%	0%	5%	27%
With- drawn	6	0	0	3	5	31	1	0	4	3	1	0	1	0	0	1	15	71
	33%	0%	0%	27%	56%	74%	50%	0%	33%	12%	14%	0%	5%	0%	0%	100%	79%	38%
Total	18	3	2	11	9	42	2	8	12	26	7	1	19	3	3	1	19	186
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

In 2018-2019, an average of 108 days elapsed between case docketing and the waiver request, which is longer than the extended 60-day standard, with 43% of cases exceeding the 60-day standard.

Fig 9. # of Days between Case Docketing and Waiver Request, by Result of Request, 2018-2019

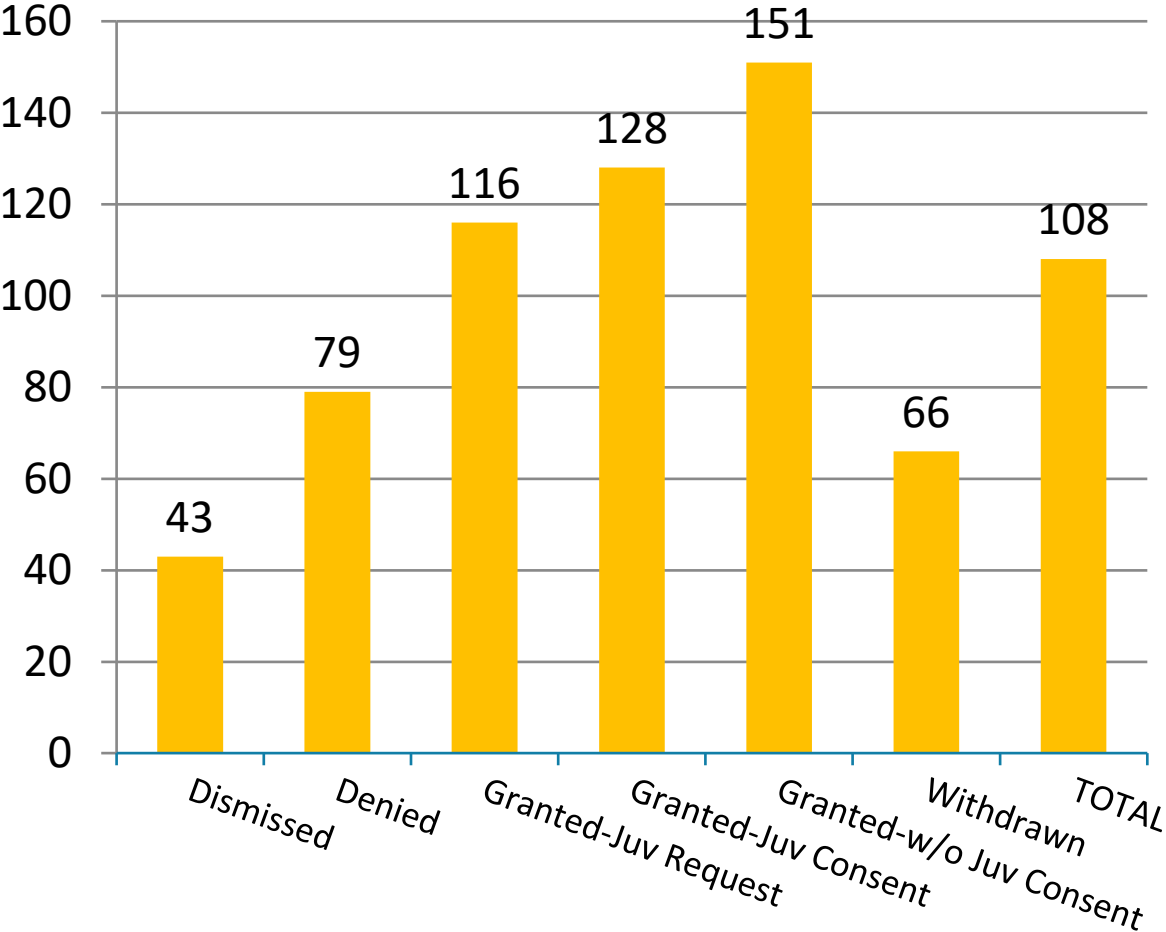
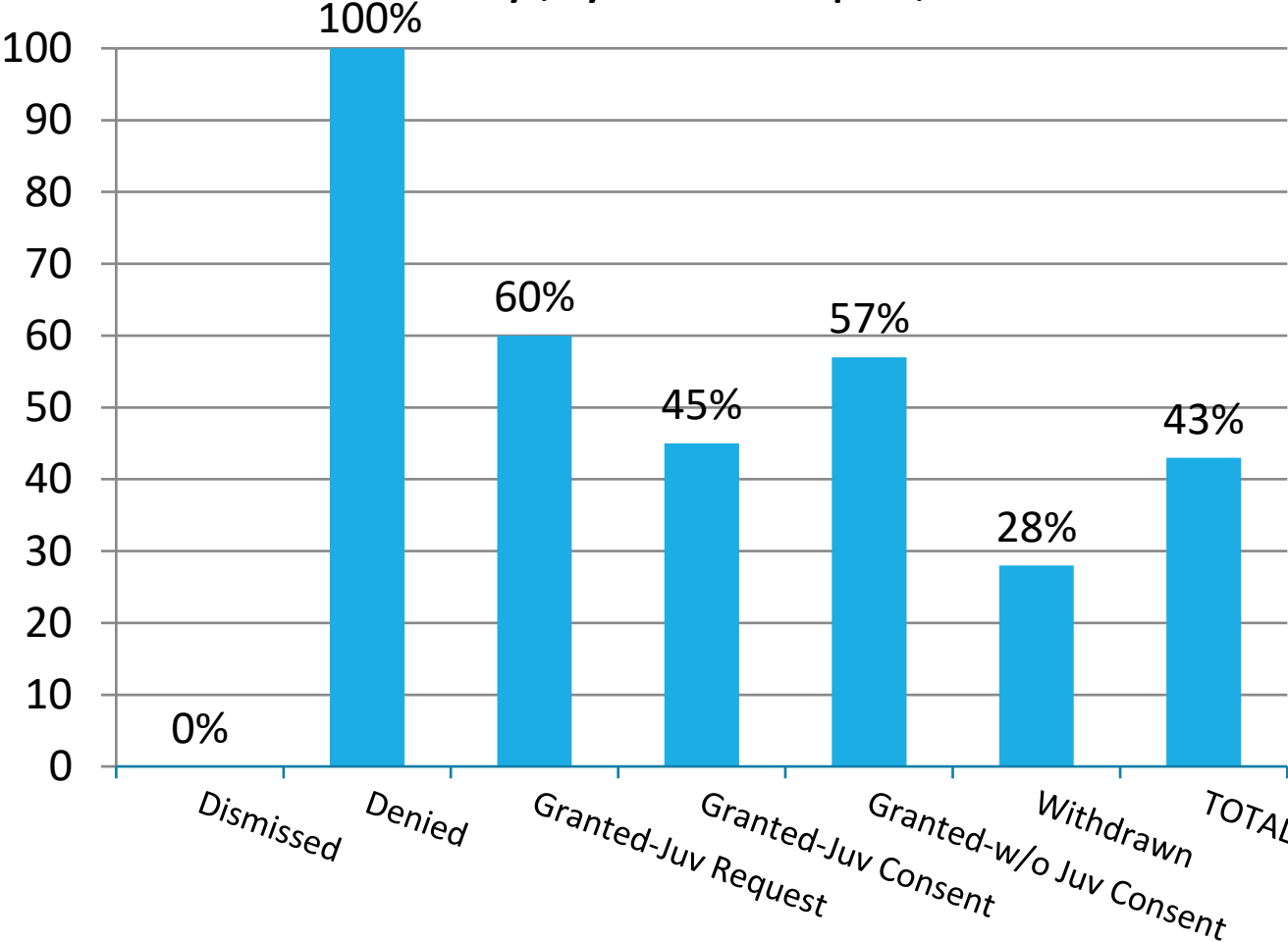


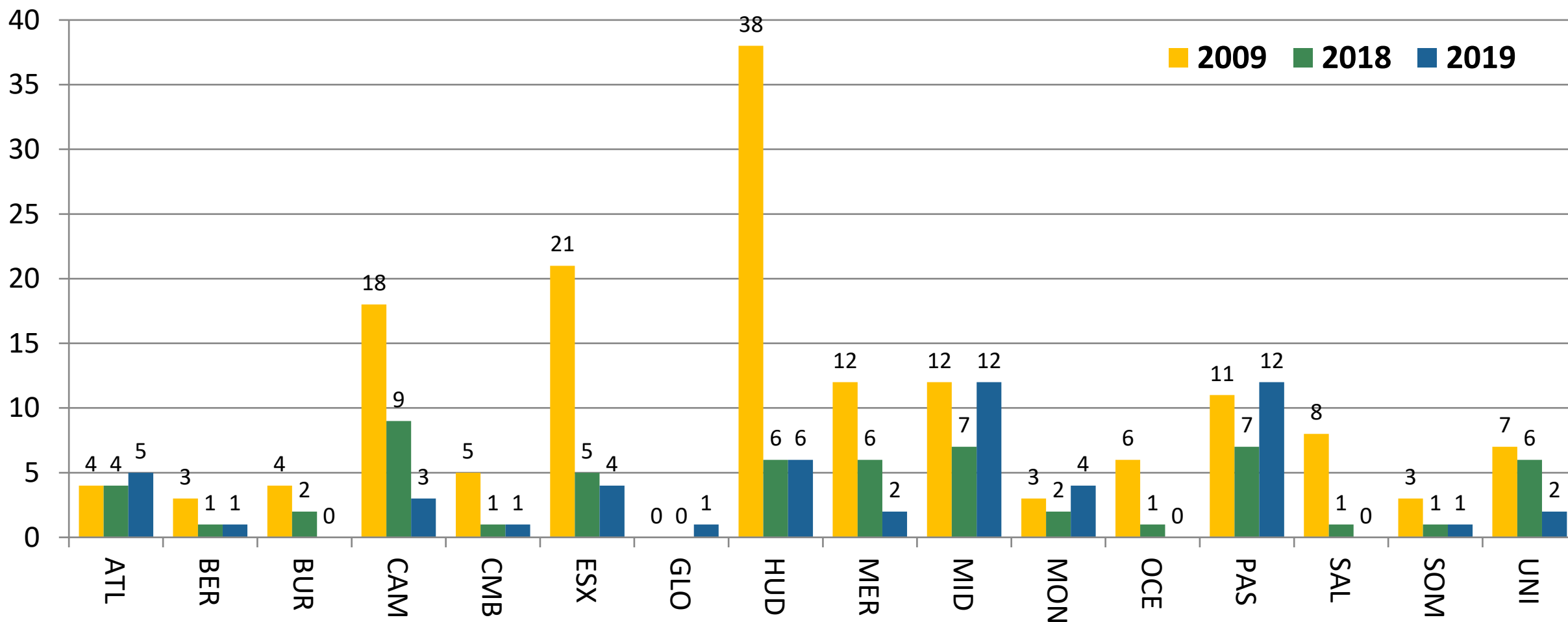
Fig 10. % of Cases where Case Docketing to Waiver Request exceeded 60 Days, by Result of Request, 2018-2019



Waiver Requests Granted 2018-2019

In 2019, 54 youth were waived to criminal court, down from 59 in 2018 (-8%) and 155 in 2009* (-65%).
 In 2019, Middlesex and Passaic had the most youth waived (12 each).

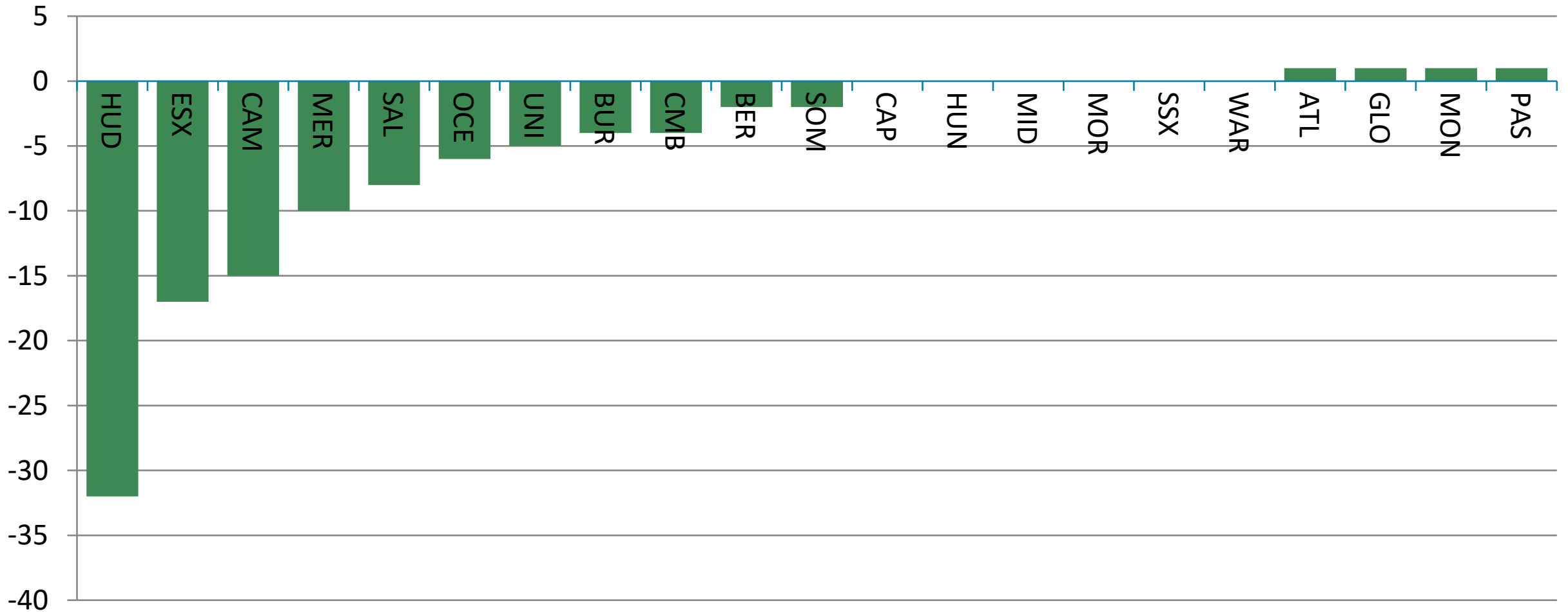
Fig 11. # of Youth Waived to Adult Criminal Court, by County, 2009, 2018, 2019*



*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, Hunterdon, Morris, and Sussex).

From 2009 to 2019, 11 counties saw a decrease in the number of youth waived to criminal court, with Hudson seeing the largest decrease (-32 youth), followed by Essex (-17 youth). Four counties saw an increase: Atlantic, Gloucester, Monmouth, and Passaic (1 youth each).

Fig 12. Change in # of Youth Waived to Adult Criminal Court, by County, 2009 to 2019



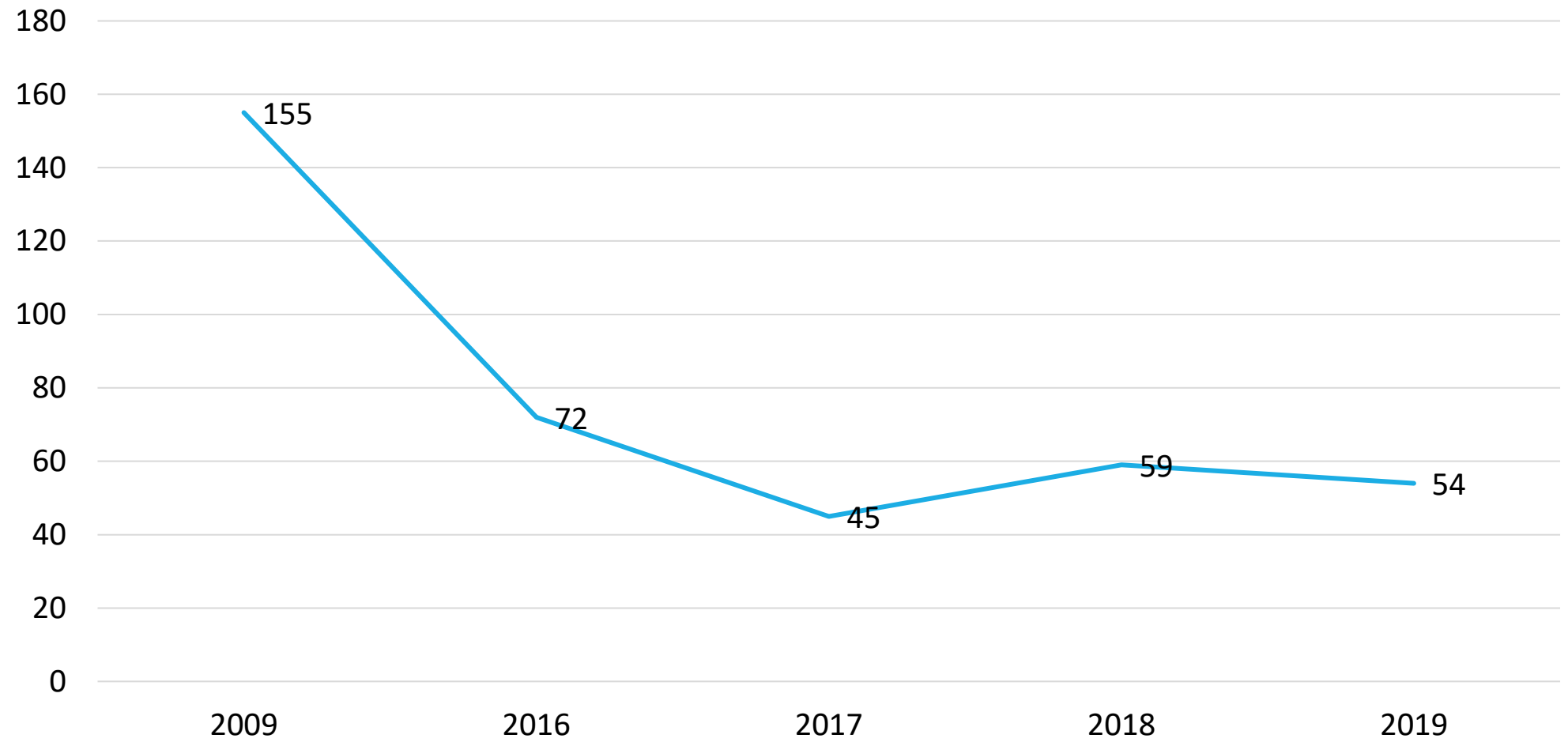
From 2018 to 2019, six counties saw a decrease in the number of youth waived to criminal court, with Camden seeing the largest decrease (-6 youth). Five counties saw a one-year increase, with Middlesex and Passaic seeing the largest increase (+5 youth each).

Fig 13. Change in # of Youth Waived to Adult Criminal Court, by County, 2016 to 2017



In 2019, the number of youth waived to criminal court was down 65% from 2009, dropping from 155 to 54, though the number of youth waived was up 20% from 2017, increasing from 45 to 54 youth.

Fig 14. # of Youth Waived to Adult Criminal Court, 2009 to 2019



During 2018-2019, 88% of waivers granted were for 1st degree offenses. Homicide was the most common offense type for which a waiver was granted (46%), followed by robbery (25%).

Fig 15. Degree of Offense

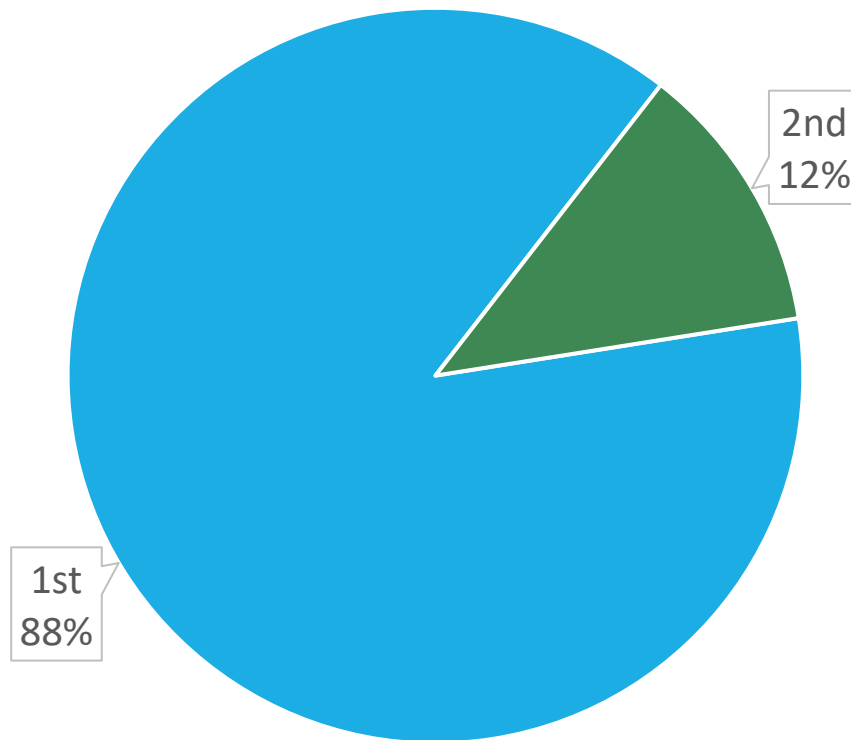
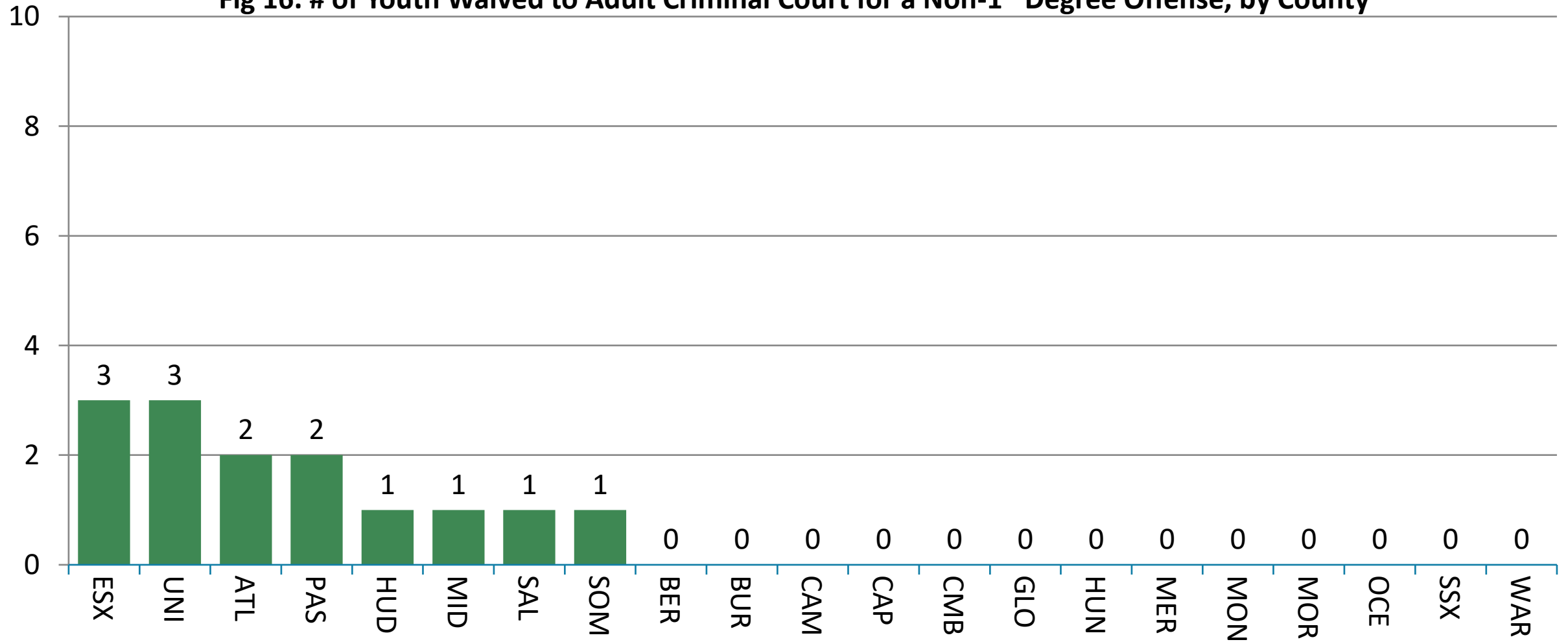


Table 3. Offense Type and Degree	%	#
1st Degree Homicide	46%	52
1st Degree Aggravated Sexual Assault	10%	11
2nd Degree Sexual Assault	1%	1
1st Degree Kidnapping	4%	4
1st Degree Carjacking	4%	5
1st Degree Robbery	23%	26
2nd Degree Robbery	2%	2
1st Degree Offenses Against Family/Children	1%	1
2nd Degree Aggravated Assault	6%	7
2nd Degree Weapons	3%	3
2nd Degree Compounding	1%	1
TOTAL	100%	113

The percentage of waivers granted for something other than a 1st degree offense decreased from 21% in 2016-2017 to 12% in 2018-2019.

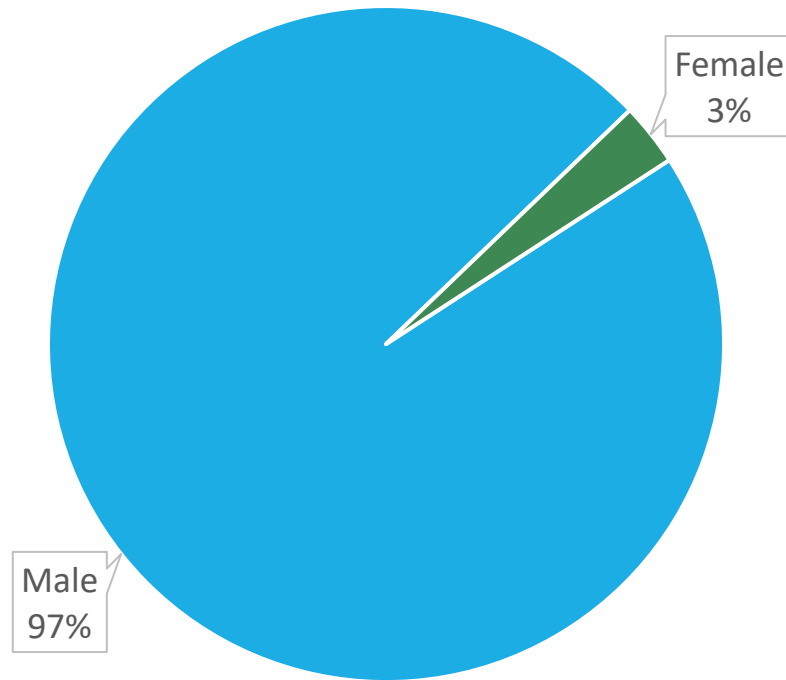
In 2018-2019, in thirteen counties, no youth were waived to criminal court for offenses less than the 1st degree.

Fig 16. # of Youth Waived to Adult Criminal Court for a Non-1st Degree Offense, by County



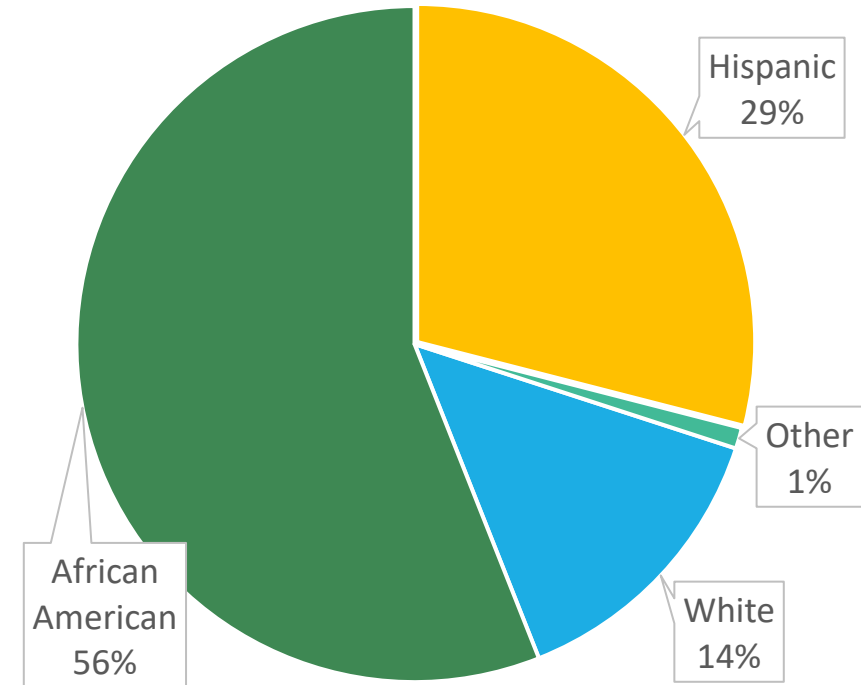
During 2018-2019, the majority of waivers granted were for males (97%) and African-American youth (56%).

Fig 17. Gender



1 female was waived in Camden, Passaic, and Somerset

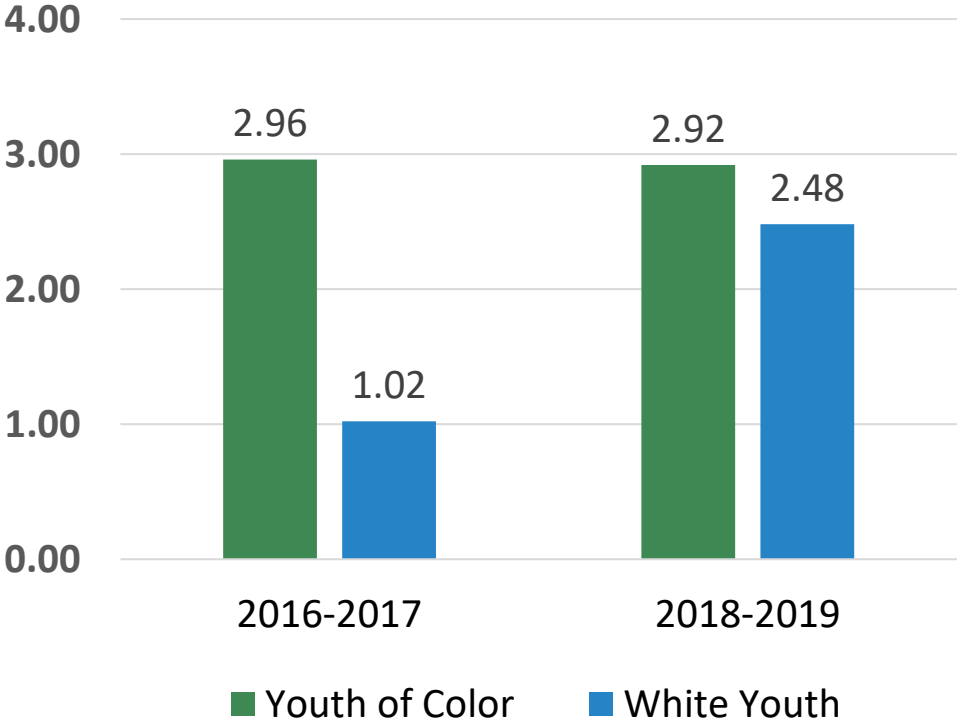
Fig 18. Race/Ethnicity



White youth comprised 50% of waivers granted in Monmouth (3 youth), Burlington and Bergen (1 youth each). Hispanic youth comprised 50% or more of waivers granted in Middlesex (68%, 13 youth) and Bergen, Burlington, and Cumberland (50%, 1 youth each).

When controlling for severity of current offense, considering offenses of the 1st and 2nd degree, much – though not all – of the disparity seen in 2016-2017 was eliminated in 2018-2019.

Fig 19. # of Youth Waived per 100 Youth Charged with 1st/2nd Degree Offenses*

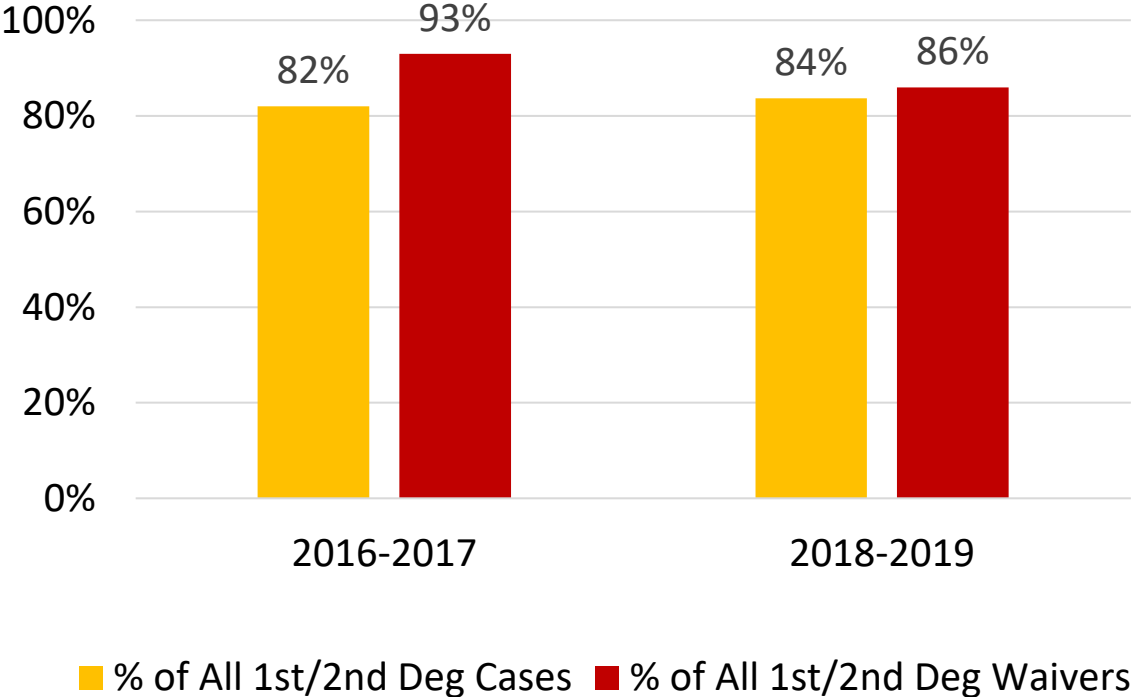


- In 2016-2017, 2.96 of every 100 youth of color charged with a 1st/2nd degree offense were waived, as compared to 1.02 of every 100 white youth charged with a 1st/2nd degree offense. In other words, 1.94 more youth of color per 100 youth were waived for 1st/2nd degree offenses as compared to similarly charged white youth.
- However, 2018-2019 saw a notable reduction in this measure of disparity, with the waiver rate for youth of color decreasing and the waiver rate for white youth increasing. In 2018-2019, 2.92 of every 100 youth of color charged with a 1st/2nd degree offense in court were waived, as compared to 2.48 of every 100 white youth charged with a 1st/2nd degree offense. In other words, 0.44 more youth of color per 100 youth were waived for 1st/2nd degree offenses as compared to similarly charged white youth.
- The disparity gap on this measure was therefore reduced from 1.94 youth to 0.44 youth between the 2016-2017 and 2018-2019 reporting periods.

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

When controlling for severity of current offense, considering offenses of the 1st and 2nd degree, much – though not all – of the disparity seen in 2016-2017 was eliminated in 2018-2019.

Fig 20. Comparing Representation Among All 1st/2nd Degree Offenses to Representation Among All 1st/2nd Degree Waivers for Youth of Color



- In 2016-2017, youth of color comprised 82% of all youth charged with 1st/2nd degree offenses in court but 93% of all waivers granted for 1st/2nd degree offenses; thus, youth of color were overrepresented by 11 percentage points among all youth waived for 1st/2nd degree offenses.
- In 2018-2019, youth of color comprised 84% of all youth charged with 1st/2nd degree offenses and 86% of all waivers granted for 1st/2nd degree offenses; thus, youth of color were overrepresented by 2 percentage points among all youth waived for 1st/2nd degree offenses.
- The disparity gap on this measure was therefore reduced from 11 percentage points in 2016-2017 to 2 percentage points in 2018-2019.

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

During 2018-2019, the majority of youth waived to criminal court were 17 years old at the time of the alleged offense (52%). Most youth had one or more prior adjudications (69%), with youth averaging 2.7 prior adjudications.

Fig 21. Age at Time of Alleged Offense*

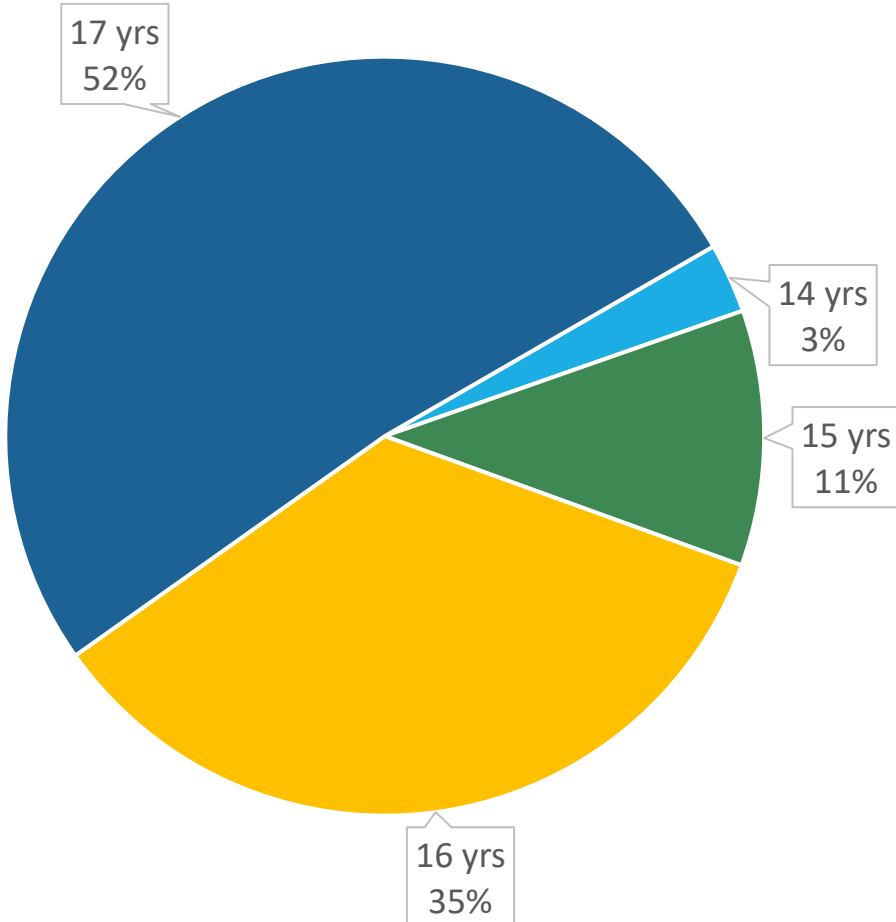
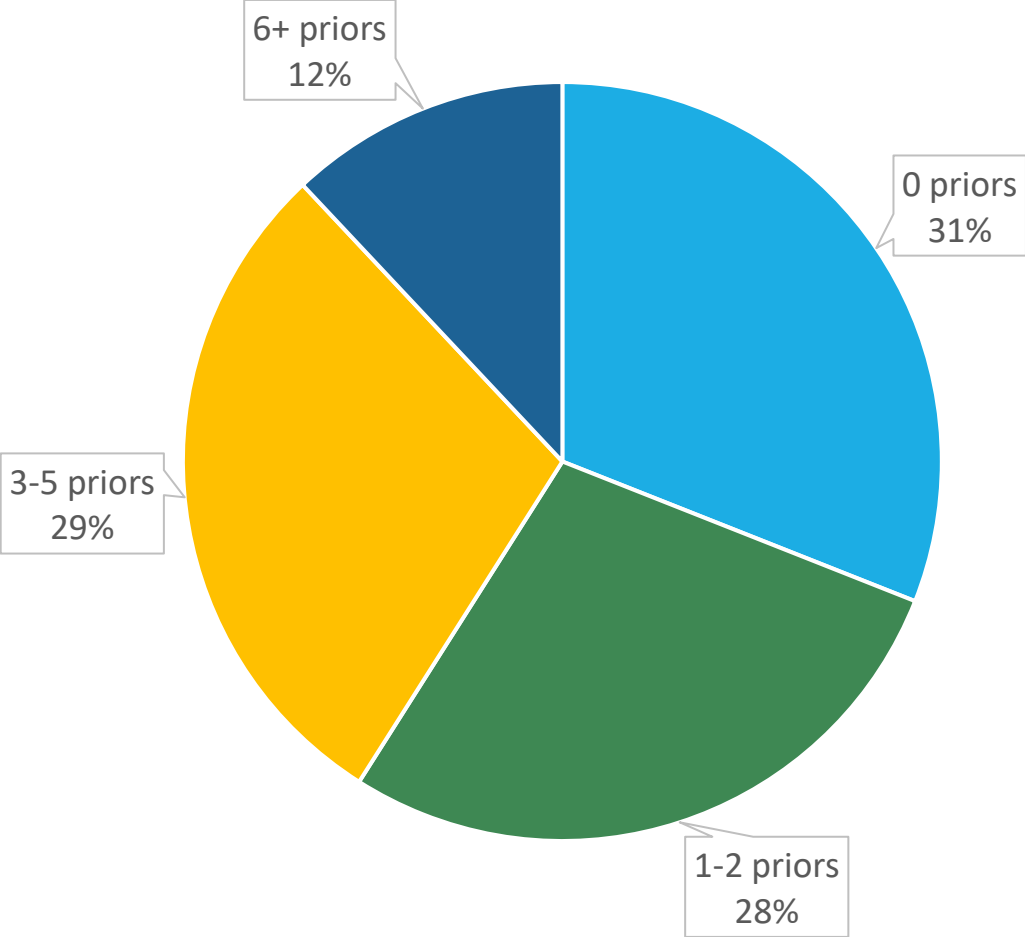


Fig 22. Prior Adjudications

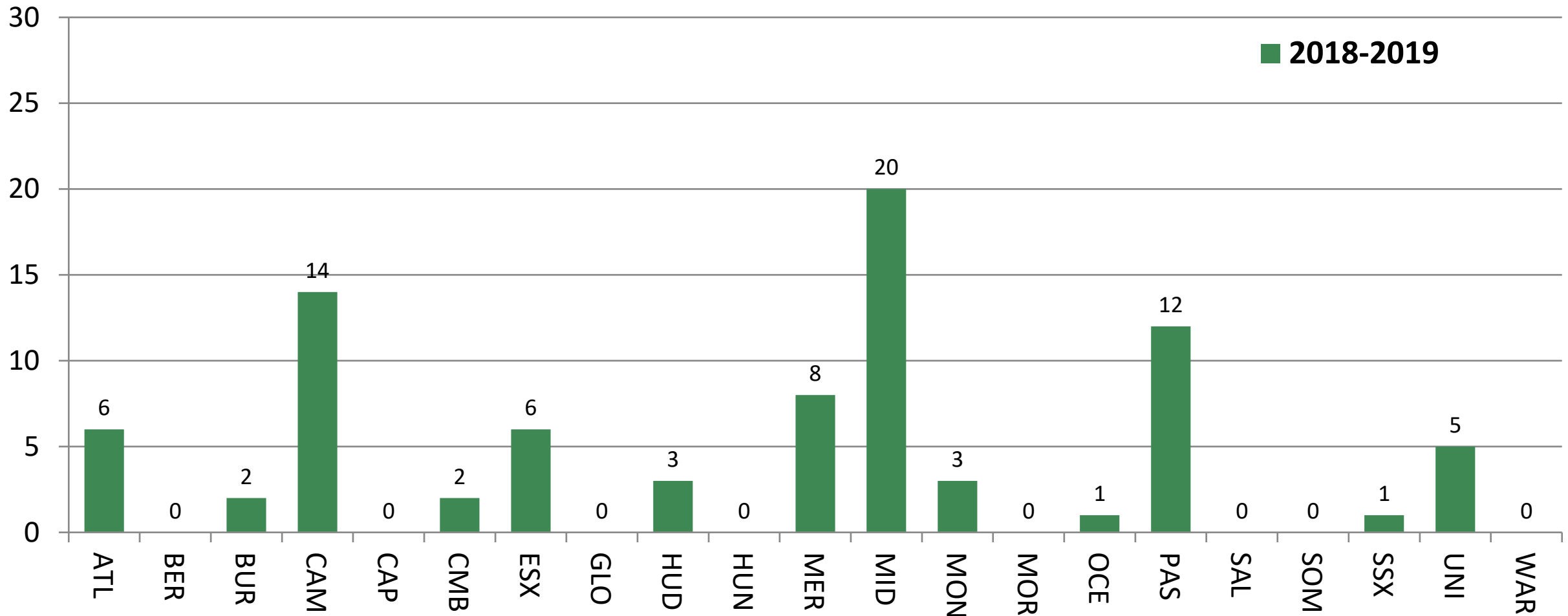


*Regarding the 3 waived 14-year olds, for 2, the offense occurred prior to the enactment of the new law; the third was a voluntary waiver pursuant to 2A:4A-27.

Waiver Cases Resolved 2018-2019

During 2018-2019, 83 youth had a waiver case resolved in criminal court.* In 2018, Middlesex (20) had the most resolved cases during the two-year period, followed by Camden (14), and Passaic (12).

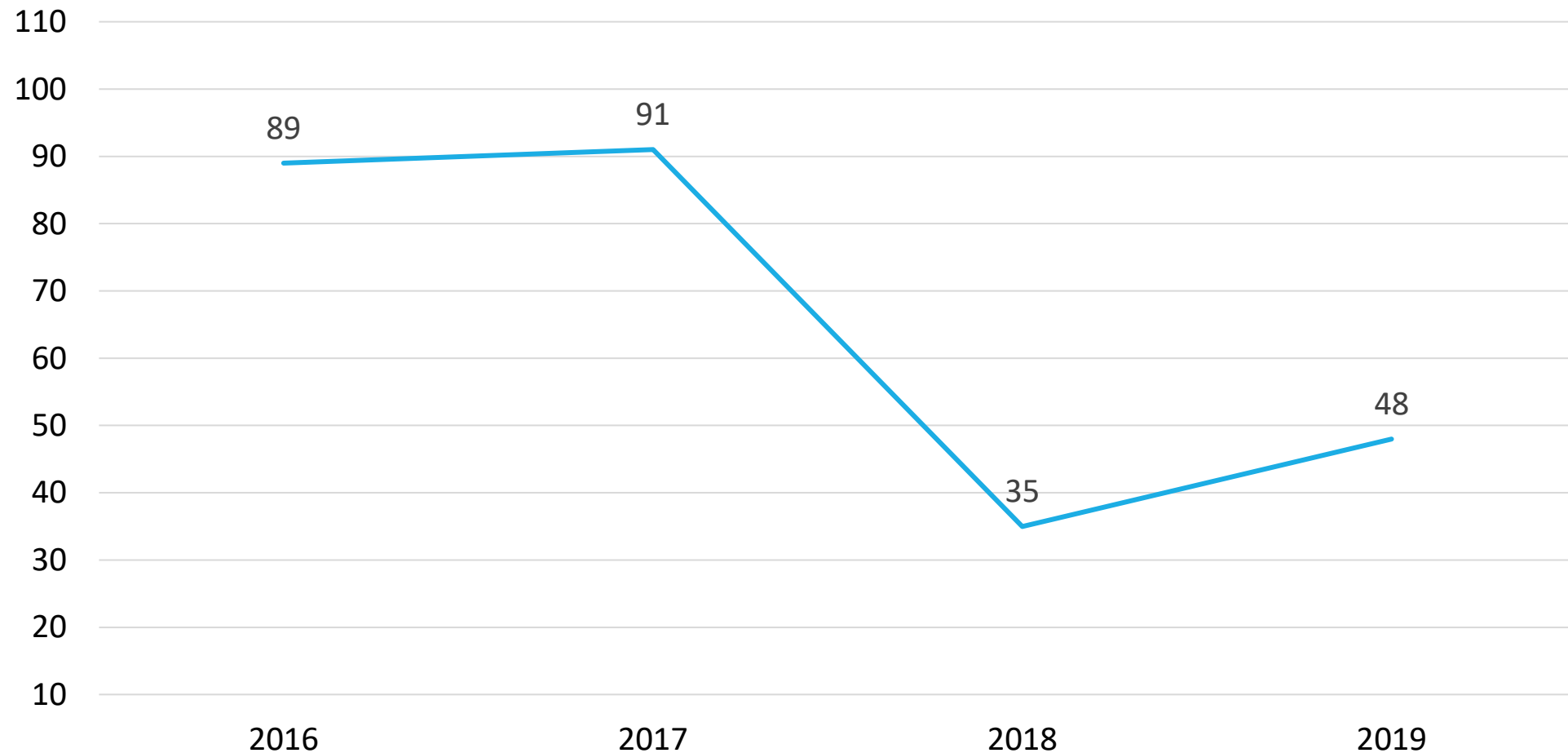
Fig 23. # of Youth with Waiver Cases Resolved in Criminal Court in 2018-2019



*For the purposes of this report, a case is considered resolved in 2018-2019 if the case was dismissed, returned to family court, or resulted in a not guilty finding in 2018-2019, or, for guilty convictions, sentencing occurred in 2018-2019.

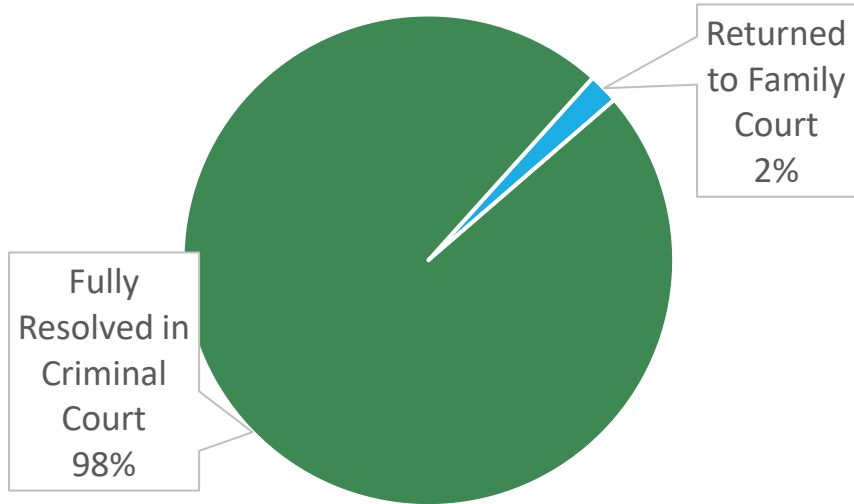
In 2019, the number of youth with a case resolved in criminal court was down 46% from 2016, dropping from 89 to 48. However, that figure increased 37% between 2018 and 2019.

Fig 24. # of Youth for Whom a Waiver was Requested, by County, 2016-2019



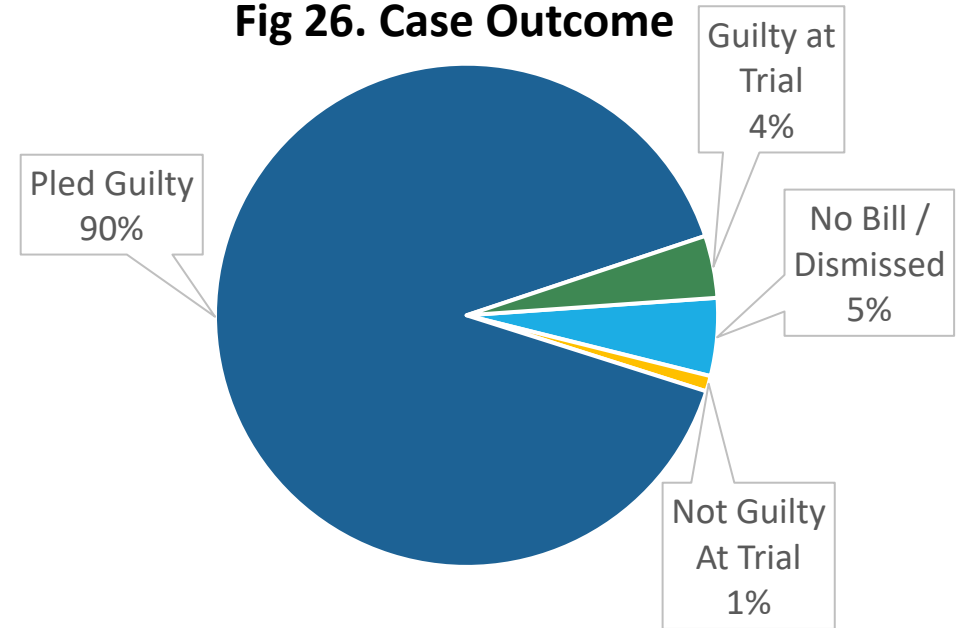
Of the 83 cases, the majority were fully resolved in criminal court (98%), with 2% returned to family court for final disposition, consistent with provisions in the law. The vast majority of youth pled guilty (90%), with another 4% found guilty at trial; a finding of guilt was not reached in 6% of the cases.

Fig 25. Court of Final Resolution



- The 2 cases returned to family court were in Mercer and Ocean (1 each). The dispositions imposed in family court ranged from 3 years of juvenile probation to 4 years of incarceration in a juvenile facility (i.e., commitment to the JJC).

Fig 26. Case Outcome



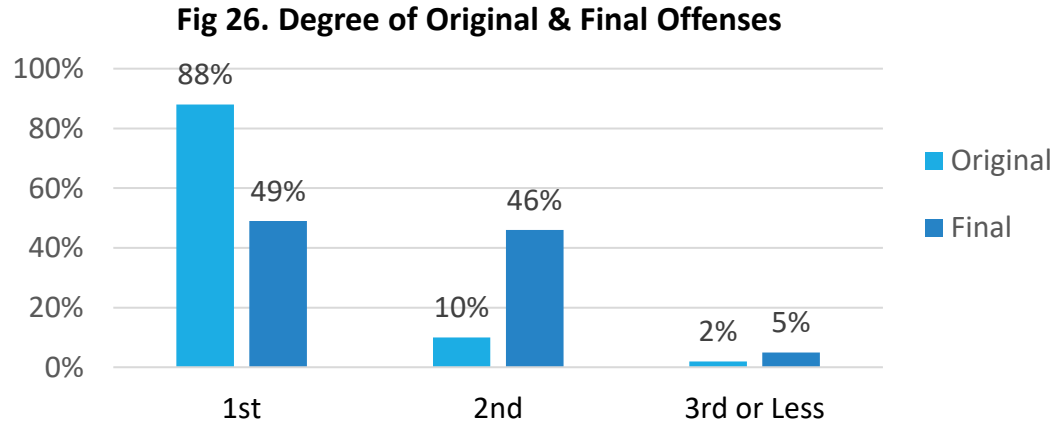
- In 5 cases (6%) a finding of guilt was not reached as the result of “no bill” (failure to indict), or dismissal.
- These cases occurred in Camden, Hudson, Mercer, Middlesex, and Sussex (1 case each).

While 88% of waiver cases resolved in 2018-2019 started out as 1st degree offenses, when considering the final charges at the point of final resolution, this figure drops to 49% (up from 37% in 2018-2019).

Homicide comprised 46% of charges as originally filed, and 27% of cases as resolved.

Table 4. Offense Type and Degree	Original		Final	
	%	#	%	#
1st Degree Homicide	46%	38	24%	20
2nd Degree Homicide	0%	0	2%	2
1st Degree Aggravated Sexual Assault	6%	5	1%	1
2nd Degree Sexual Assault	1%	1	5%	4
1st Degree Gang Criminality	1%	1	0%	0
1st Degree Carjacking	7%	6	1%	1
1st Degree Robbery	28%	23	23%	19
2nd Degree Robbery	1%	1	16%	13

Offense Type and Degree (Table 4. continued)	Original		Final	
	%	#	%	#
2nd Degree Aggravated Assault	4%	3	10%	8
2nd Degree Weapons	4%	3	11%	9
2 nd Degree Escape	0%	0	2%	2
3 rd Degree Persons Offense	0%	0	2%	2
3 rd Degree Other Offense	2%	2	1%	1
Disorderly Persons Offense	0%	0	1%	1
TOTAL	100%	83	100%	83



- In 41% 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 83 cases, the vast majority (91%) resulted in a term of incarceration either in a juvenile facility (60%) or an adult facility (31%); incarceration in an adult facility was down from 46% during the 2016-2017 period. For the 76 incarcerated youth, the average term length was 8.8 years, ranging from 2 to 38 years.

Fig 28. Final Case Outcome

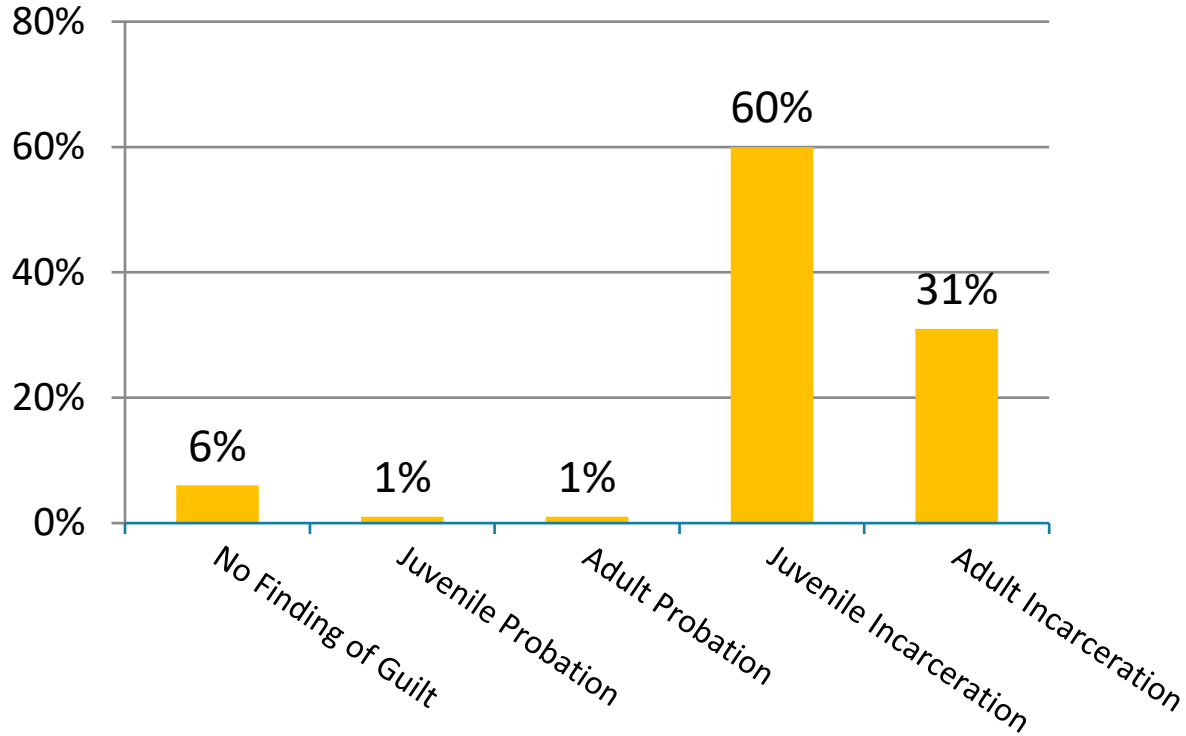
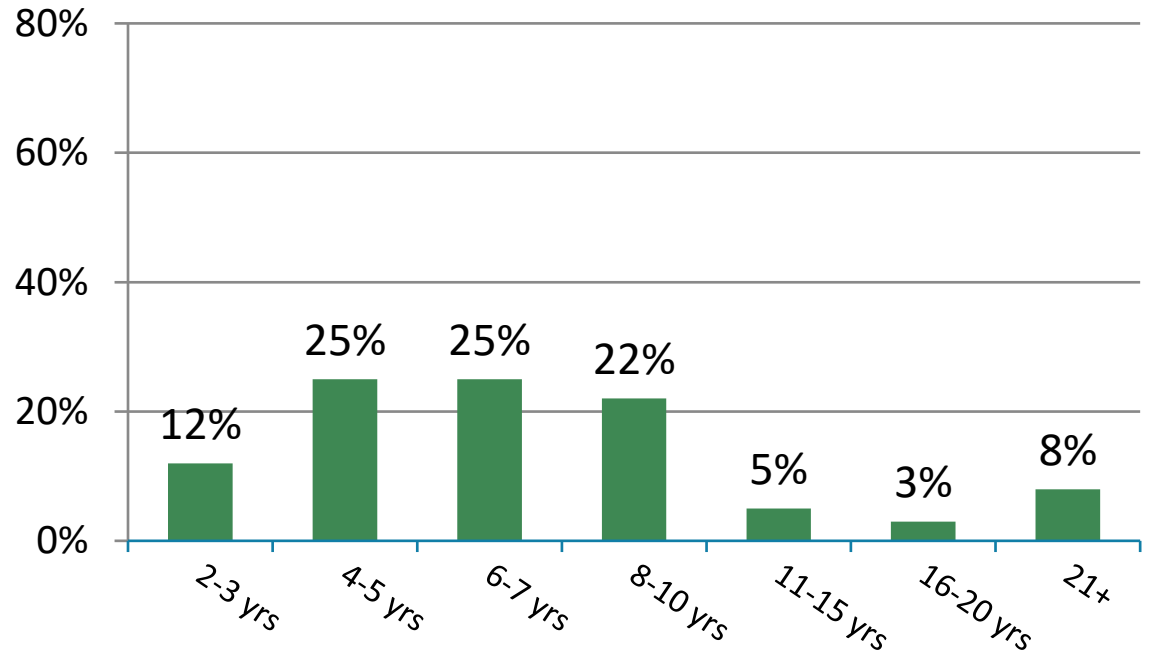


Fig 29. Length of Incarceration



In 9 counties, one or more youth were sentenced to incarceration in an adult facility: Camden (6), Middlesex (6), Union (4), Cumberland (2), Essex (2), Hudson (2), Passaic (2), Mercer (1), and Monmouth (1).

Youth with waiver cases resolved in 2018-2019 spent an average of 521 days, or 1.4 years, moving through the court process; for 2% of waived youth, the case process lasted more than 3 years. This is an improvement over the 2016-2017 reporting period, where case processing time was 802 days (2.2 years) and where 21% of youth experienced case processing time longer than 3 years.

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

	ATL	BUR	CAM	CMB	ESX	HUD	MER	MID	MON	OCE	PAS	SSX	UNI	Total
Docketed to Waiver Granted	172	6	248	361	286	170	338	149	95	298	75	1002	167	198
Waiver Granted to Disposition	207	127	180	230	165	173	152	154	97	121	161	27	597	188
Disposition to Sentencing**	212	212	82	84	127	197	121	151	66	45	155	0	146	135
TOTAL: Docketed to Final Resolution**	591	345	510	674	577	540	610	454	258	464	391	1029	910	521

- Time from the date the case was docketed in family court to the date the waiver was granted averaged 198 days, or 6.5 months.
- Time from the date the waiver was granted in family court to disposition in criminal court averaged 188 days, or 6.2 months.
- Time from the date of disposition in criminal court to sentencing averaged 135 days, or 4.5 months.

*The N for this calculation excludes the 5 cases that resolved via a finding of no bill/dismissed or not guilty a trial, as sentencing does not occur in those cases. **For the 2 cases returned to family court, this total includes time between criminal court resolution and final resolution in family court. For these 2 cases, this final piece of the case process averaged 93 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 59 in 2018 and 54 in 2019. 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. Statewide, disparity between waiver rates for youth of color as compared to white youth has been reduced since the 2016-2017 reporting period, a positive finding. Local jurisdictions should remain focused on further ensuring and maintaining equity in decision-making as it relates to waiver.
4. Case processing times for youth waived and tried as adults have decreased from 802 days in 2016-2017 to 521 days in 2018-2019 (-281 days), a positive finding. However, even with these improvements, on average, 1.4 years elapsed between the date the case was filed in court and the date of final resolution. All partners should continue to focus on further improving case processing times.
5. Finally, the practice of sentencing youth to terms of incarceration in adult facilities decreased by 15 percentage points between the 2016-2017 and 2018-2019 reporting periods. While this reflects another improvement, this practice should be a continued focus since the presumption is that terms of incarceration for waived youth will be served in a juvenile facility.