

Juvenile Waiver Practice in New Jersey

An Analysis of Waivers Requested, Waivers
Granted, and Waiver Cases Resolved in
Criminal Court in 2020-2021

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

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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the time to file a waiver motion from 30 to 60 days, arguably reducing the number of waivers filed then subsequently withdrawn;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 2020 or 2021; 2) all youth for whom a waiver request was granted in 2020 or 2021; and 3) all cases resolved in the Criminal Part in 2020 or 2021 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 2020 and 2021 through to conclusion would not result in a timely report.

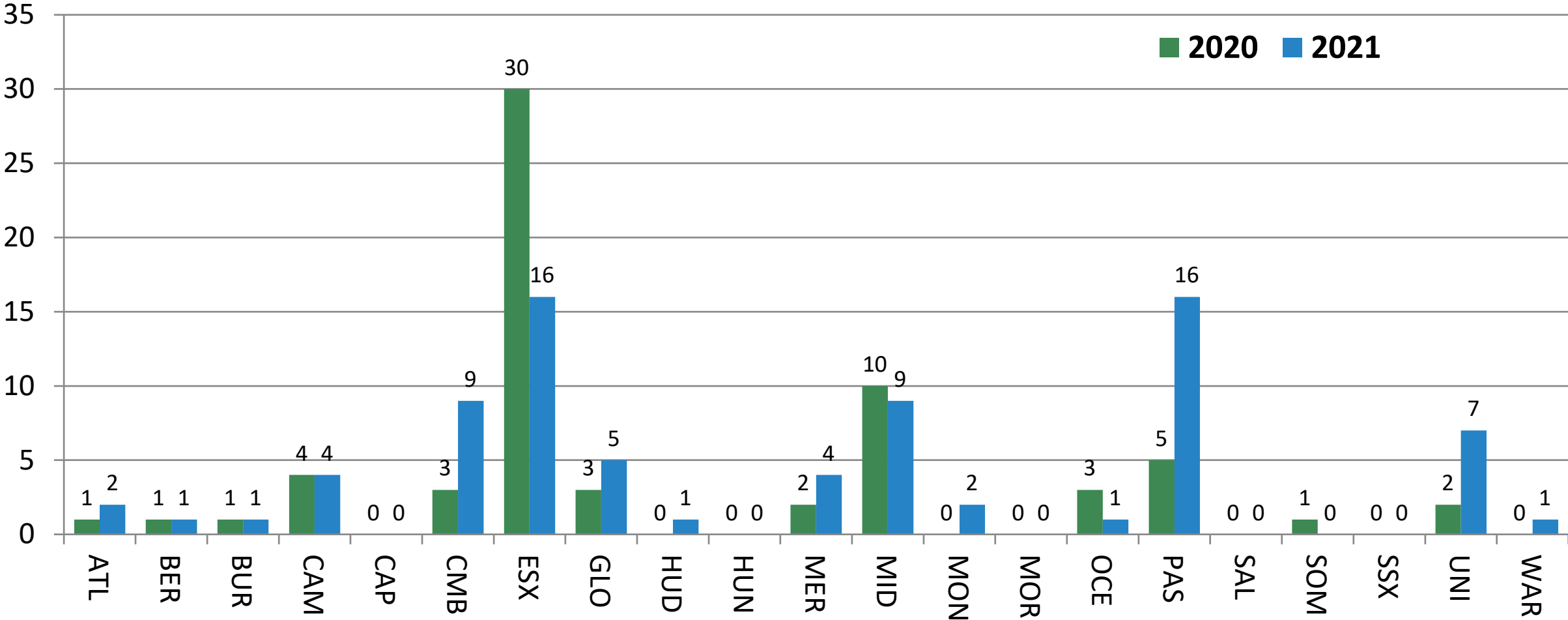
FACTS (the Family Automated Case Tracking System) served as the data source for the first two populations and Promis (Prosecutor's Management Information System)/Gavel served as the data source for the third population. Note that the unit of analysis is the *youth*, and not the *case* (i.e., youth with 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. The third data file was compared against JJC records regarding waived youth sentenced to JJC custody as an additional verification. Again, cases were added or edited based on information obtained through this process.

Waivers Requested 2020-2021

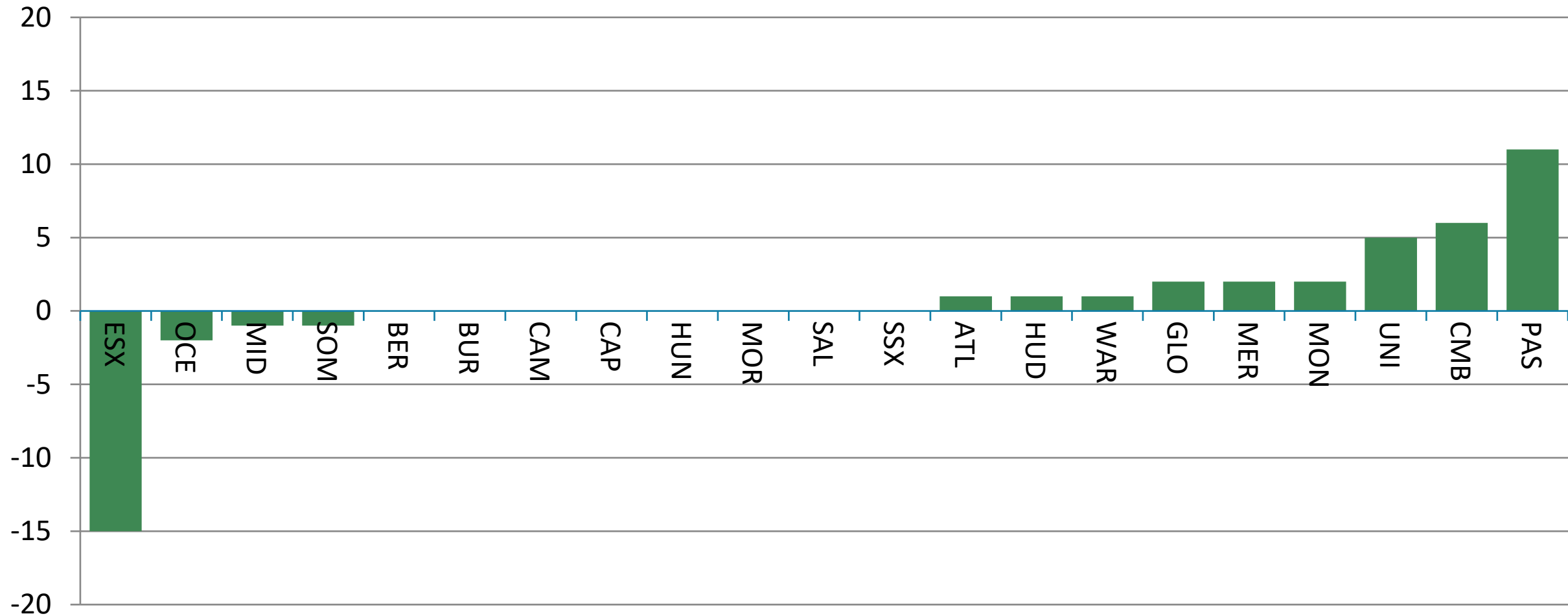
In 2021, 79 youth were the subject of a waiver request in New Jersey, up from 66 in 2020, an increase of 19.7%. In 2020, Essex (30) had the most waiver requests, followed by Middlesex (10). In 2021, Passaic (16) had the most waiver requests, followed by Essex (16), and Middlesex and Cumberland (9 each).

Fig 1. # of Youth for Whom a Waiver was Requested, by County, 2020 & 2021



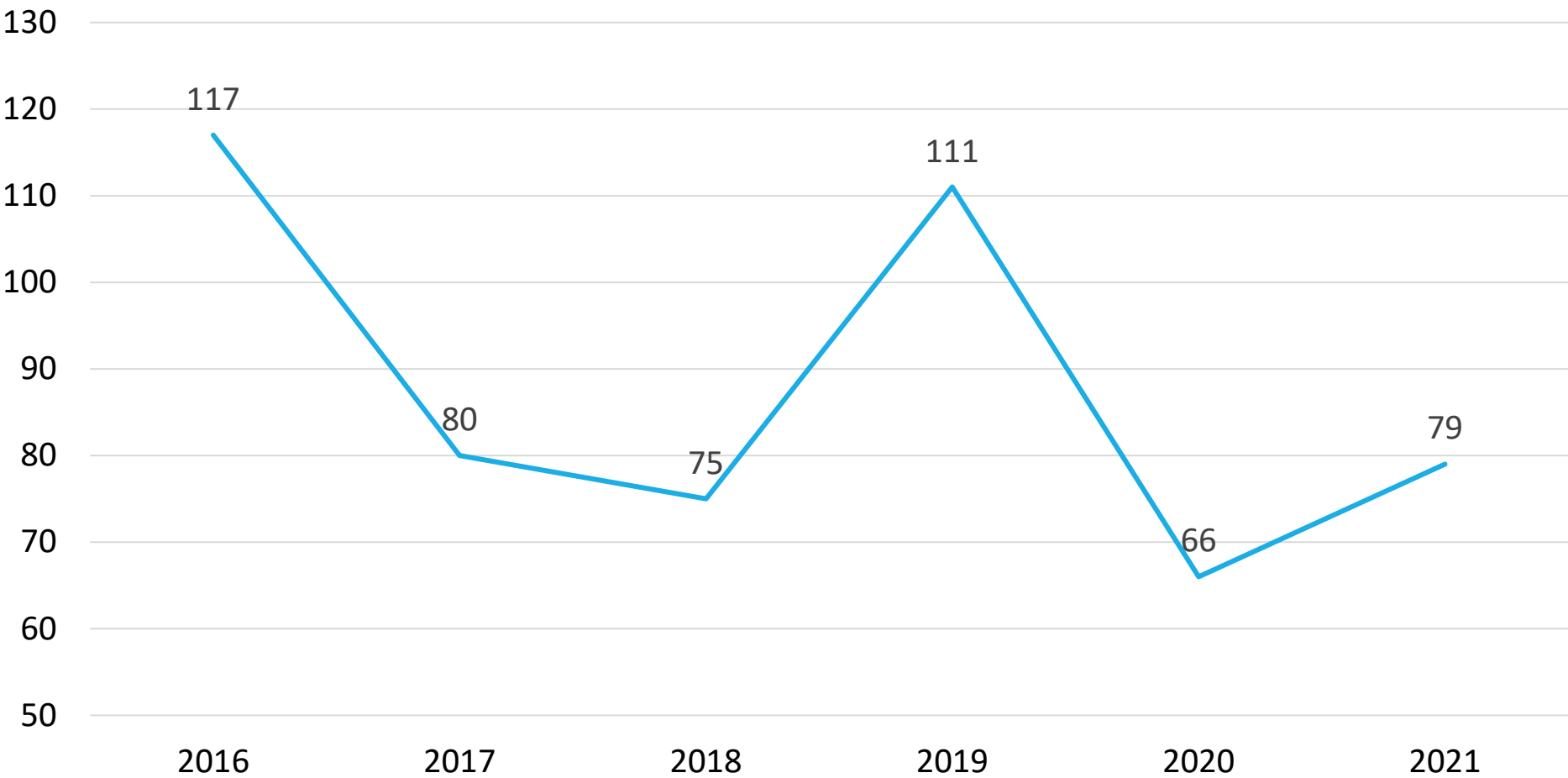
From 2020 to 2021, four counties saw a decrease in the number of youth experiencing a waiver request, with Essex seeing the largest decrease (-15 youth). Nine counties saw an increase, with the largest increase occurring in Passaic (+11 youth), followed by Cumberland (+6 youth).

Fig 2. Change in # of Youth for Whom a Waiver was Requested, by County, 2020 to 2021



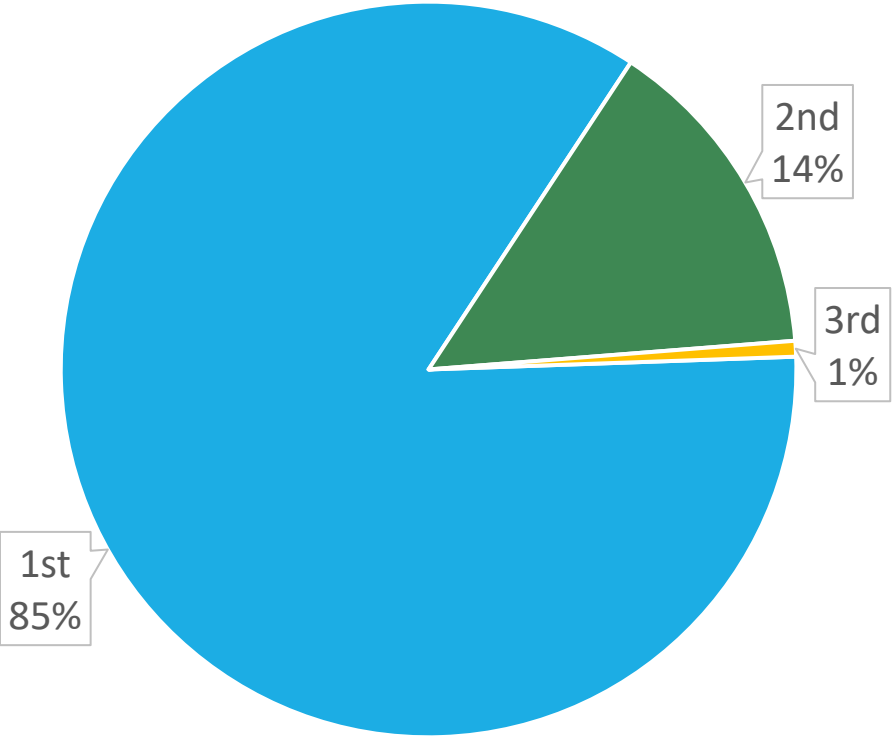
In 2021, 79 youth were the subject of a waiver request in New Jersey. While this is an increase from 66 youth in 2020 (+19.7%), it reflects a decrease of about one-third as compared to 2016, which had 117 waiver requests (-32.5%), demonstrating a sustained downward trend.

Fig 3. # of Youth for Whom a Waiver was Requested Statewide, 2016-2021



During 2020-2021, 84.8% of waiver requests were for 1st degree offenses. Homicide was the most common offense type for which a waiver was requested (37.9%), followed by robbery (22.1%).

Fig 4. Degree of Offense



The percentage of waiver requests for something other than a 1st degree offense remained steady between 2018-2019 (15.1%) and 2020-2021 (15.2%).

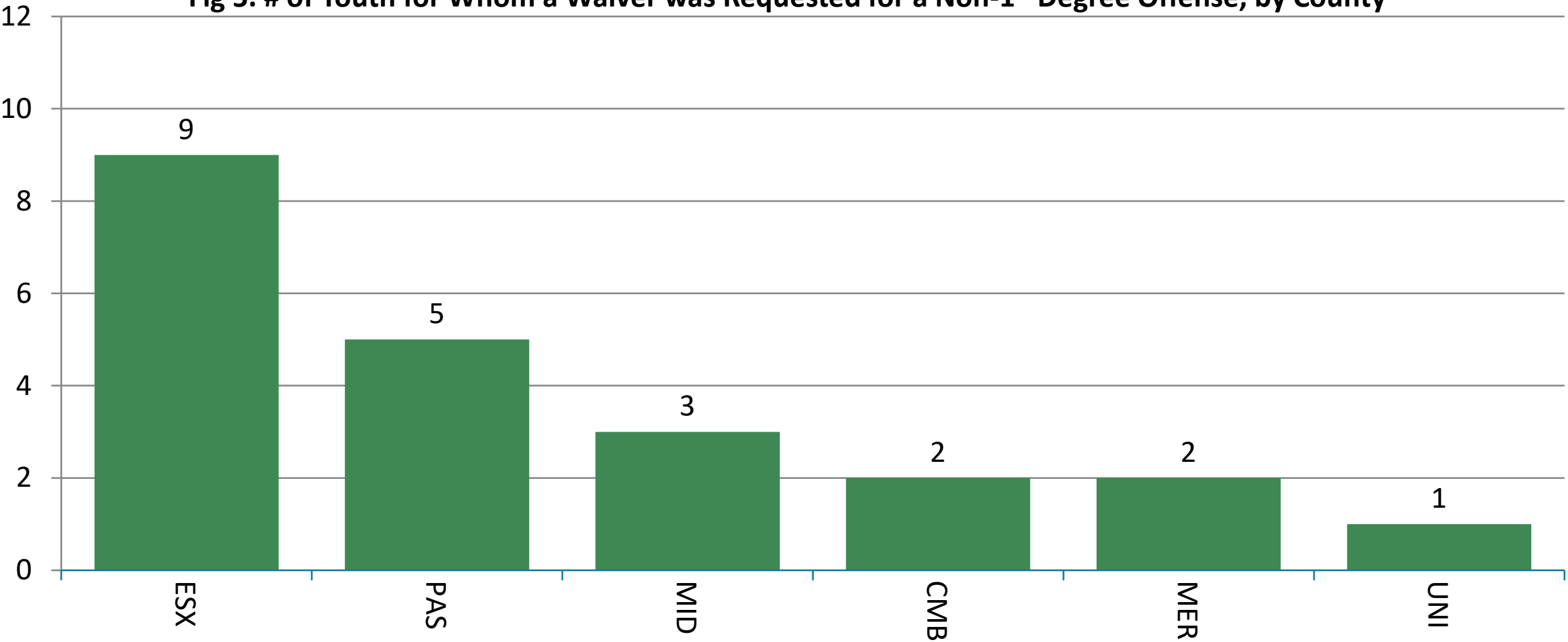
Table 1. Offense Type and Degree*	%	#
1 st Degree Homicide	37.9%	55
1 st Degree Sexual Assault-Aggravated	11.0%	16
1 st Degree Kidnapping	0.7%	1
1 st Degree Carjacking	13.1%	19
1 st Degree Robbery	21.4%	31
1 st Degree False Public Alarm	0.7%	1
2 nd Degree Sexual Assault	0.7%	1
2 nd Degree Assault-Aggravated	9.0%	13
2 nd Degree Robbery	0.7%	1
2 nd Degree Luring, Enticing Child into Auto, Structure, Isolated Area	1.4%	2
2 nd Degree Weapons	2.8%	4
3 rd Degree Theft	0.7%	1
TOTAL	100.0%	145

*Throughout the report categories of offenses listed include attempt or conspiracy to commit the offense.

During 2020-2021, 22 waivers were requested for non-1st degree offense across six counties. This reflects a decrease from 2018-2019 when 28 waivers were requested for non-1st degree offenses across 12 counties.

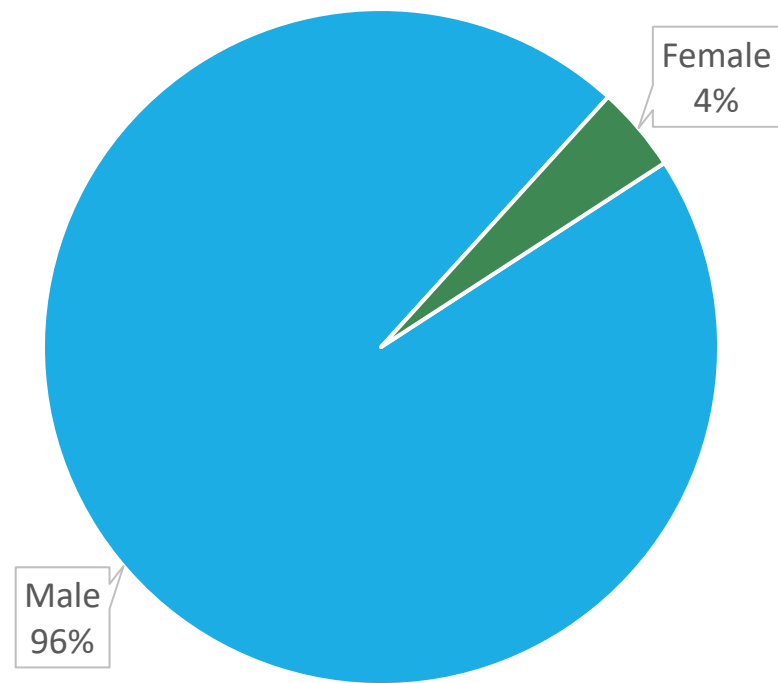
During 2020-2021, the county with the most waivers filed for non-1st degree offenses was Essex (9).

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



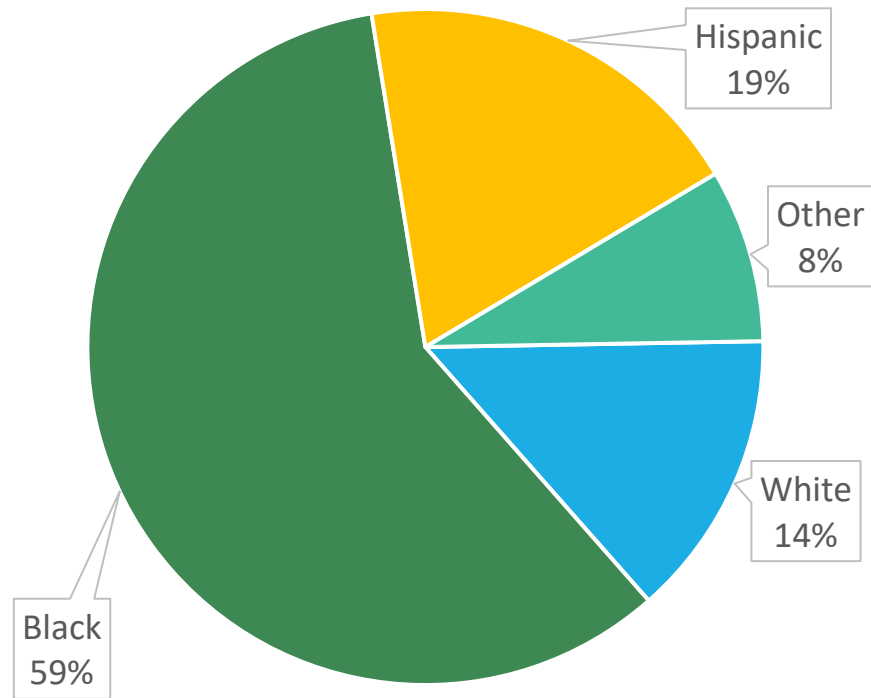
During 2020-2021, the majority of waivers requested were for males (96%) and Black youth (59%).

Fig 6. Gender



In five counties, a waiver was requested for females: Essex (2 females) and Burlington, Camden, Middlesex, and Passaic (1 female each).

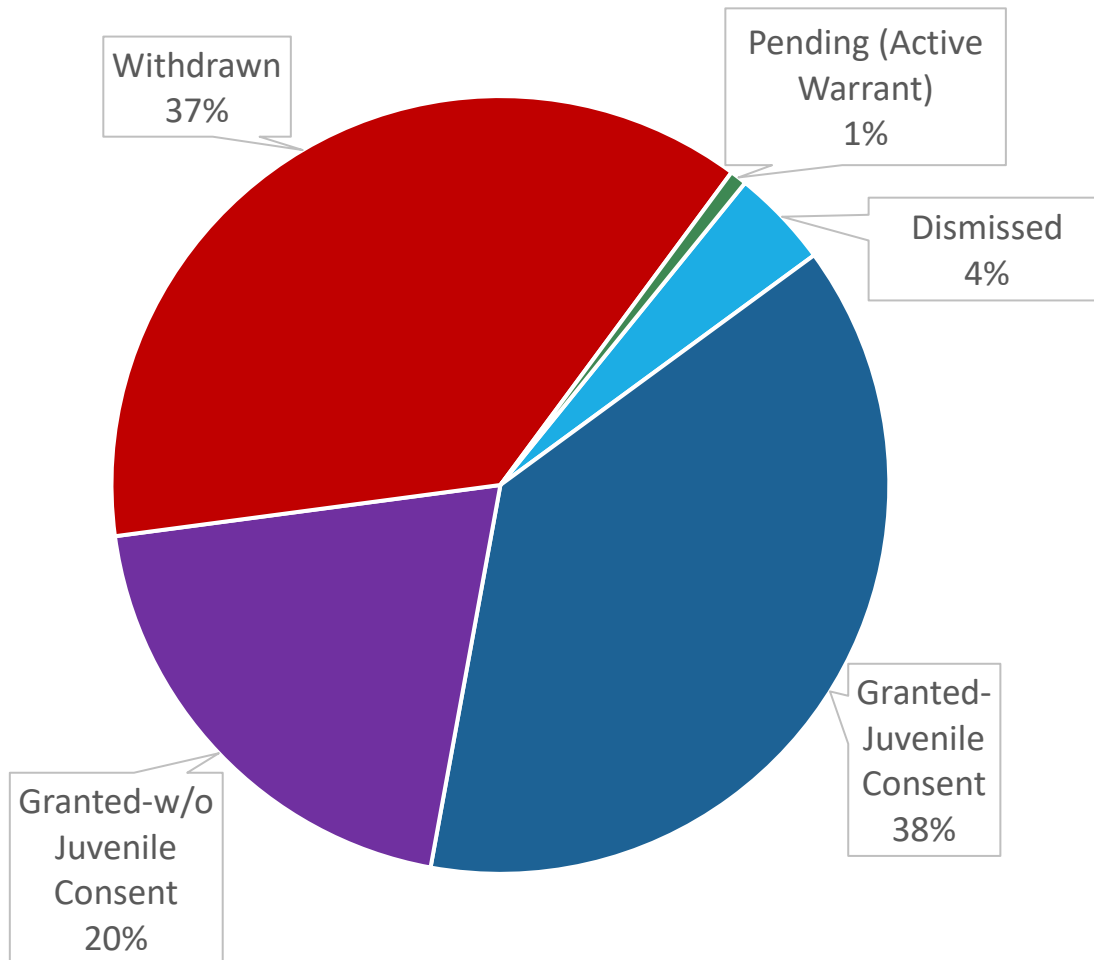
Fig 7. Race/Ethnicity



The only county where white youth comprised a majority of waiver requests was Hudson (100%, 1 youth). Hispanic youth comprised a majority of waiver requests in Passaic (52%, 11 youth). Black youth comprised the majority of waiver requests in all other counties.

During 2020-2021, 58% of waivers requested were granted and 41% were withdrawn or dismissed.

Fig 8. Result of Waiver Requests



- 41% of waiver requests were later withdrawn or dismissed.
- 38% of waiver requests were granted with the juvenile's consent and 20% were granted without the juvenile's consent.
- In one case, the waiver request remained active as of 8/2024 due to an active warrant.
- No waiver requests were denied.

Considering counties with at least one waiver request, the counties with the most waiver requests withdrawn or dismissed in 2020-2021 were Essex (34 youth) and Cumberland (9 youth).

Table 2.	ATL	BER	BUR	CAM	CMB	ESX	GLO	HUD	MER	MID	MON	OCE	PAS	SOM	UNN	WAR	Total
Dismissed	0	0	0	0	0	6	0	0	0	0	0	0	0	0	0	0	6
	0%	0%	0%	0%	0%	13%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	4%
Withdrawn	1	0	1	1	9	28	5	1	1	2	0	0	0	0	5	0	54
	33%	0%	50%	12%	75%	61%	63%	100%	17%	11%	0%	0%	0%	0%	56%	0%	37%
Granted-Juv Consent	0	1	0	5	2	3	2	0	1	12	2	4	20	1	2	0	55
	0%	50%	0%	63%	17%	7%	25%	0%	2%	63%	100%	100%	95%	100%	22%	0%	38%
Granted- w/o Juv Consent	2	1	1	2	1	9	1	0	4	4	0	0	1	0	2	1	29
	67%	50%	50%	25%	3%	20%	12%	0%	67%	21%	0%	0%	5%	0%	22%	100%	20%
Pending/ Active BW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
	0%	0%	0%	0%	0%	0%	0%	0%	0%	5%	0%	0%	0%	0%	0%	0%	1%
Total	3	2	2	8	12	46	8	1	6	19	2	4	21	1	9	1	145
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

In 2020-2021, an average of 105 days elapsed between case docketing and the waiver request, which is longer than the 60-day standard, with 59% of cases exceeding the 60-day standard.

Fig 9. Avg # of Days between Case Docketing and Waiver Request, by Result of Request, 2020-2021

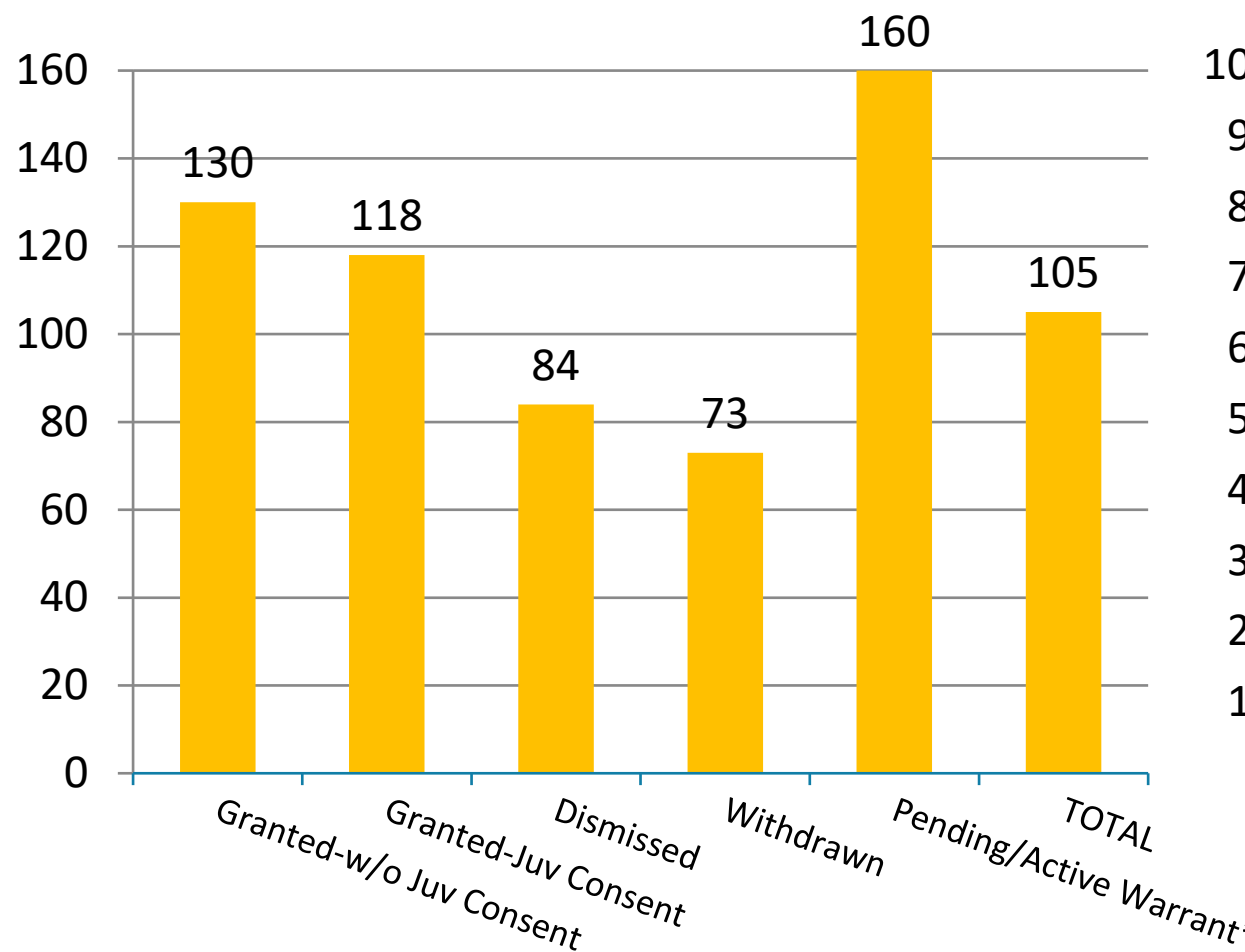
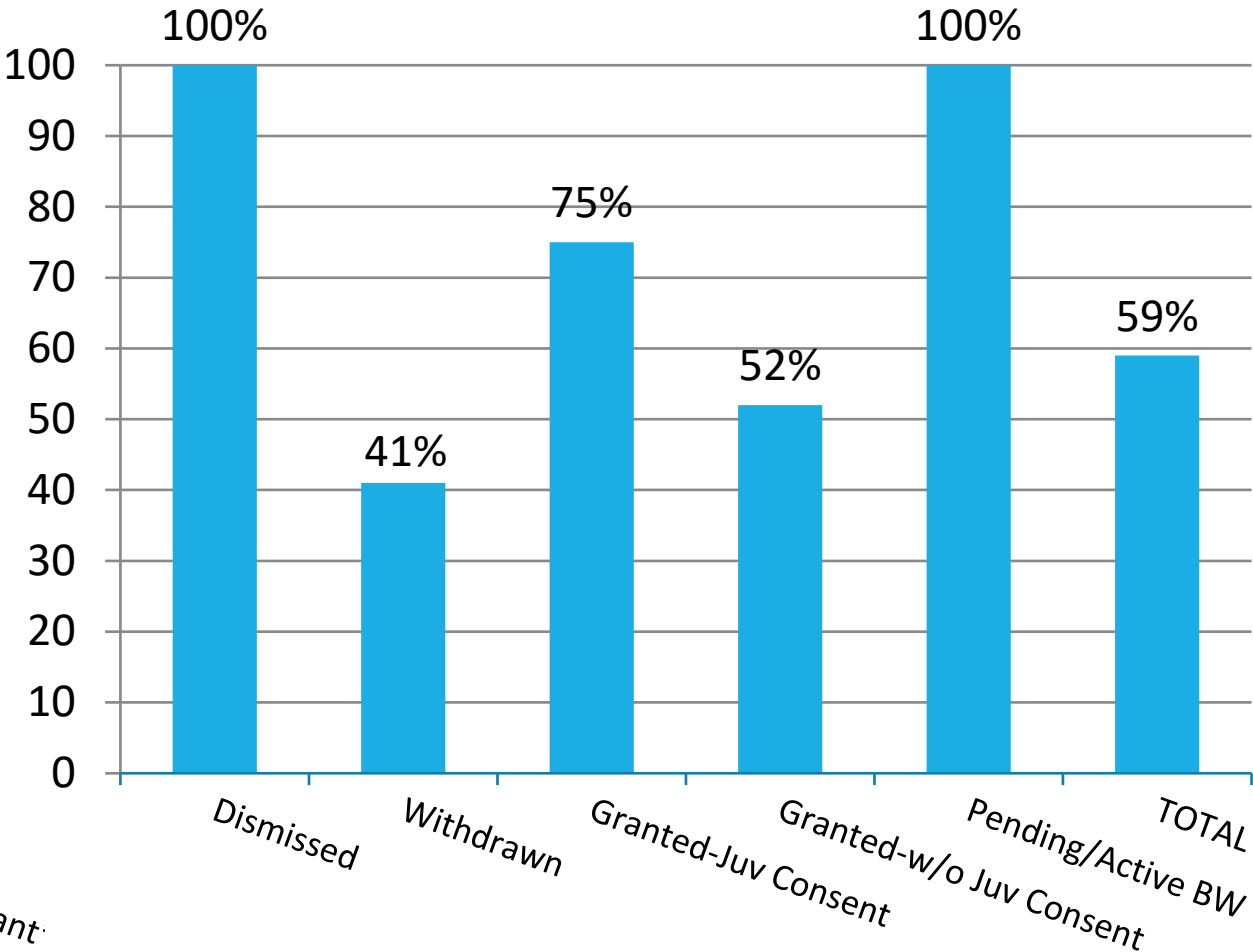


Fig 10. % of Cases where Case Docketing to Waiver Request exceeded 60 Days, by Result of Request, 2020-2021

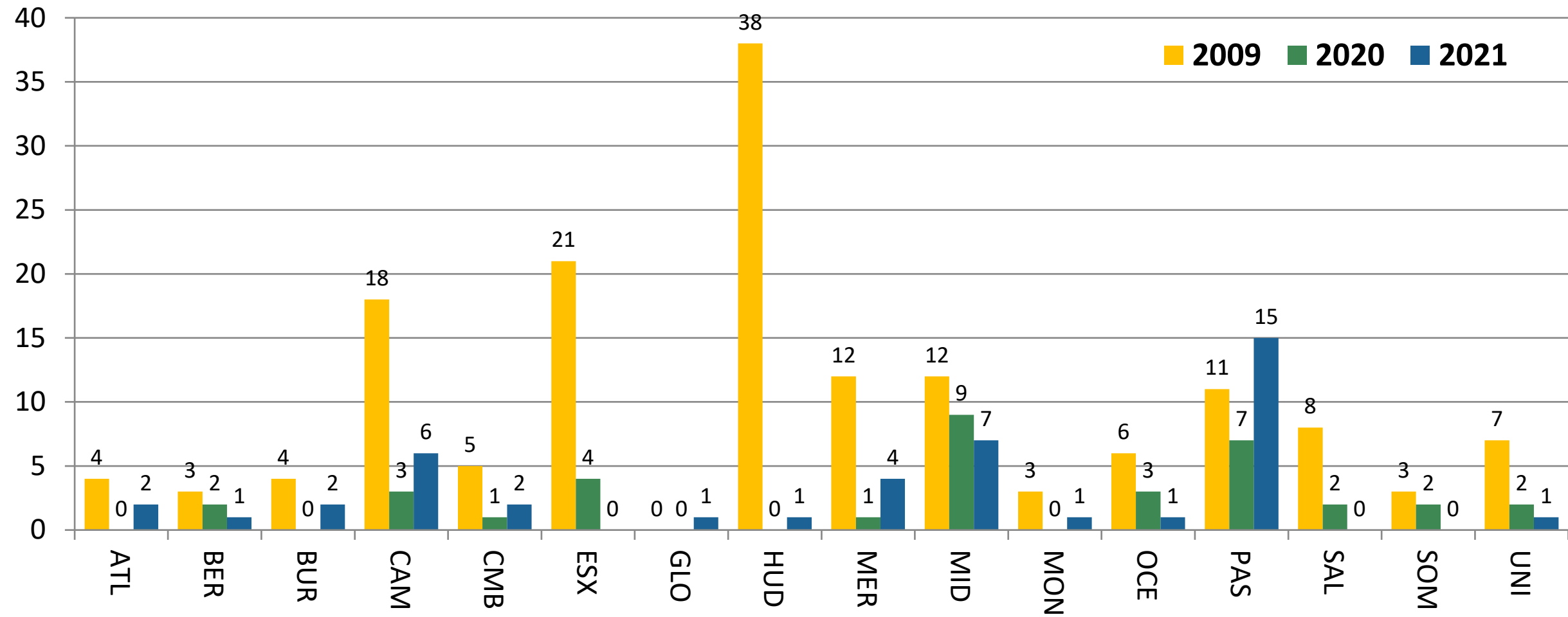


*For the one case that was still pending due to an active warrant, the warrant was issued after the waiver request was filed.

Waiver Requests Granted 2020-2021

In 2021, 44 youth were waived to criminal court, up from 36 in 2020 (+22.2%) and down from 155 in 2009* (-71.6%). All counties except Passaic remain down from the 2009 baseline. During 2020-2021, Passaic (22) had the most youth waived, followed by Middlesex (16) and Camden (9).

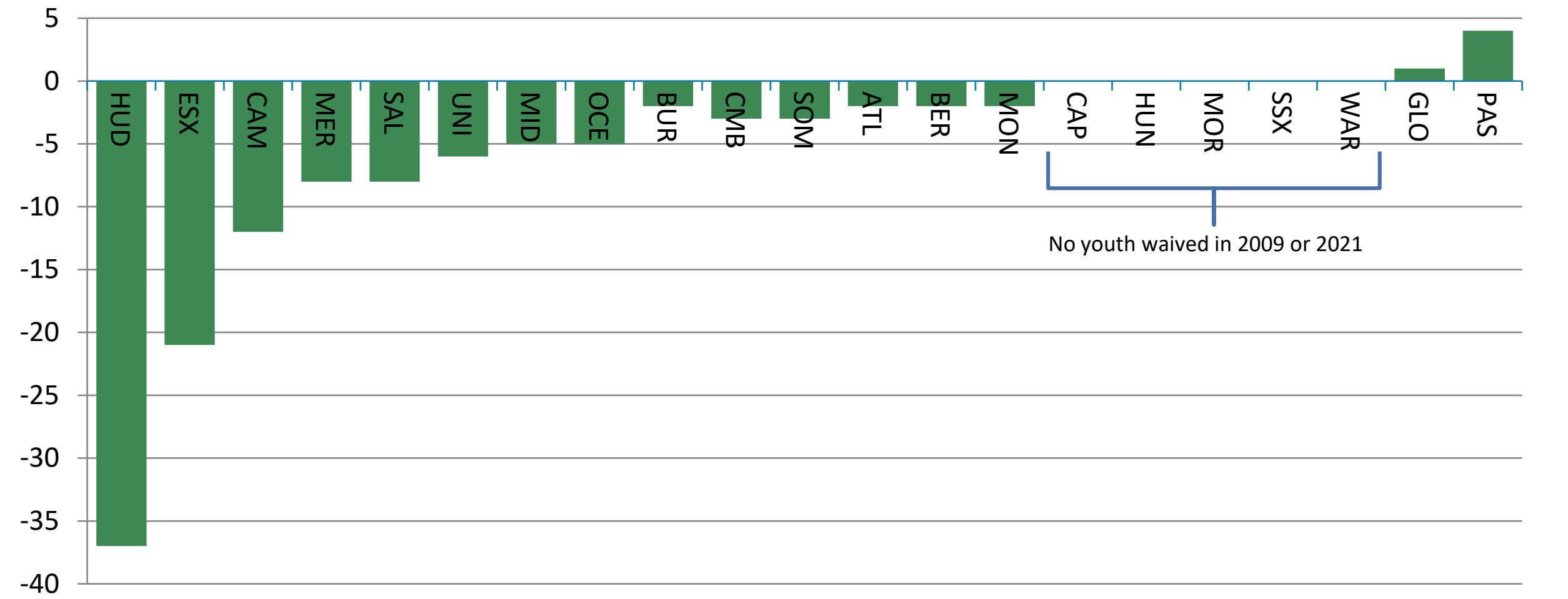
Fig 11. # of Youth Waived to Adult Criminal Court, by County, 2009*, 2020, 2021



*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, Sussex, and Warren).

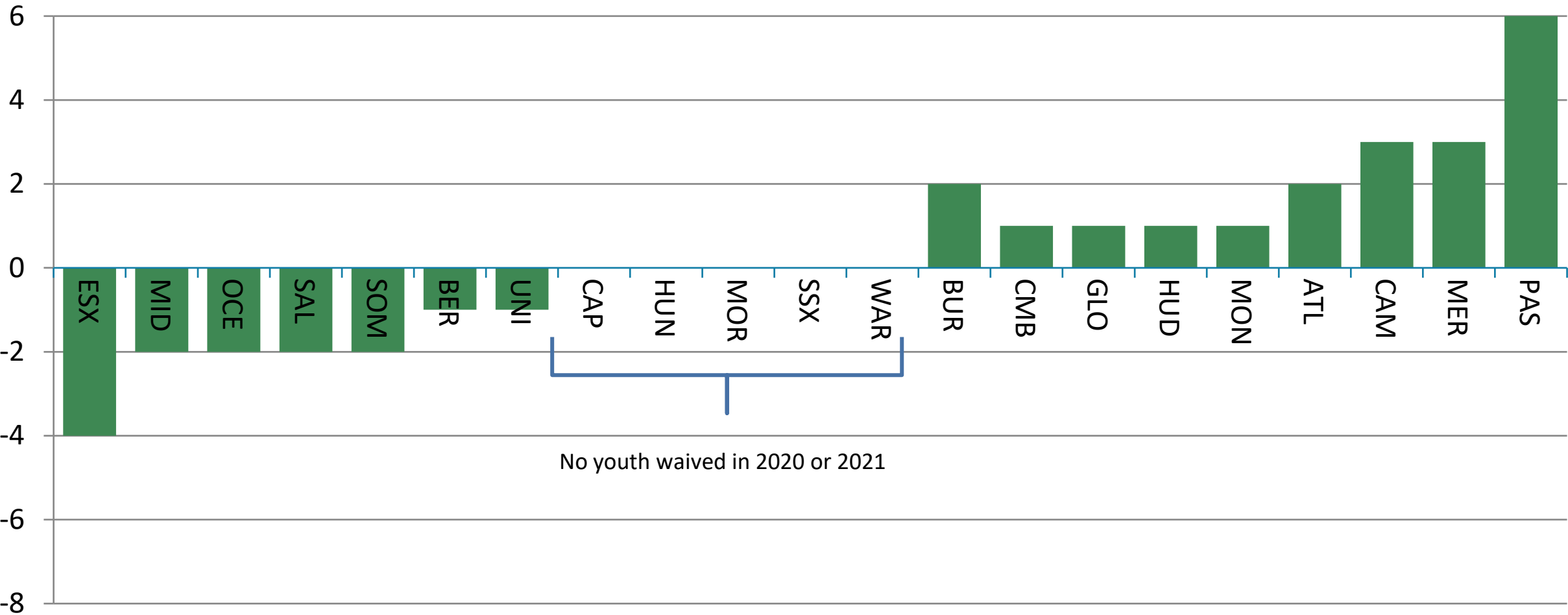
From 2009 to 2021, 14 counties saw a decrease in the number of youth waived to criminal court, with Hudson seeing the largest decrease (-37 youth), followed by Essex (-21 youth). Passaic saw the largest increase (+4 youth).

Fig 12. Change in # of Youth Waived to Adult Criminal Court, by County, 2009 to 2021



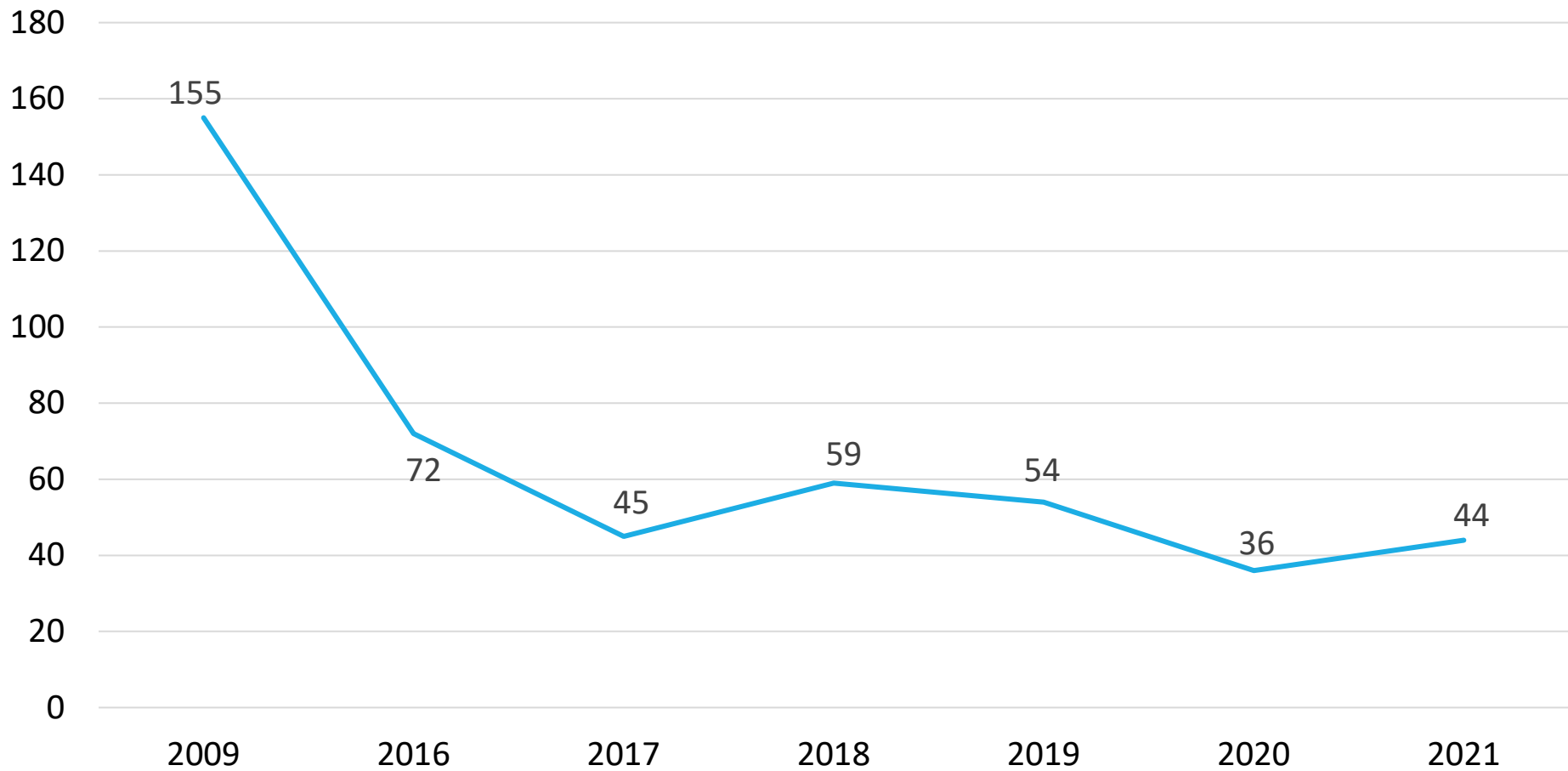
From 2020 to 2021, seven counties saw a decrease in the number of youth waived to criminal court, with Essex seeing the largest decrease (-4 youth). Nine counties experienced an increase in the number of youth waived, with Passaic seeing the largest increase (+8 youth).

Fig 13. Change in # of Youth Waived to Adult Criminal Court, by County, 2020 to 2021



In 2021, 44 youth were waived to criminal court, up from 36 in 2020 (+22.2%) and down from 155 in 2009, a decrease of 71.6%.

Fig 14. # of Youth Waived to Adult Criminal Court, 2009 to 2021



During 2020-2021, 87.5% of waivers granted were for 1st degree offenses. Homicide was the most common offense type for which a waiver was granted (38.8%), followed by Robbery (32.5%).

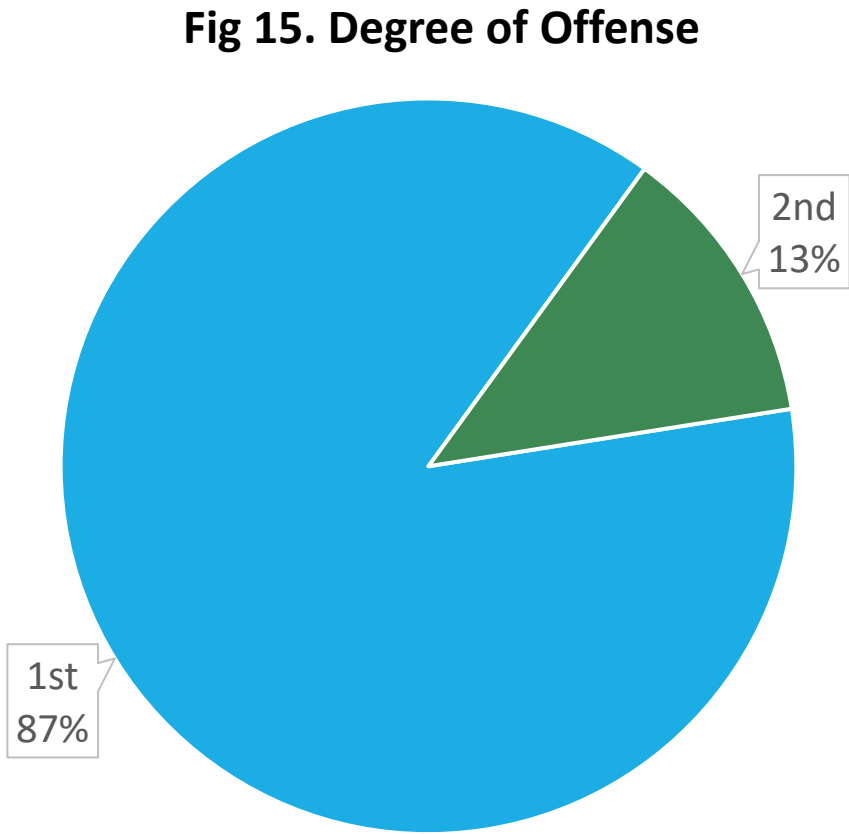
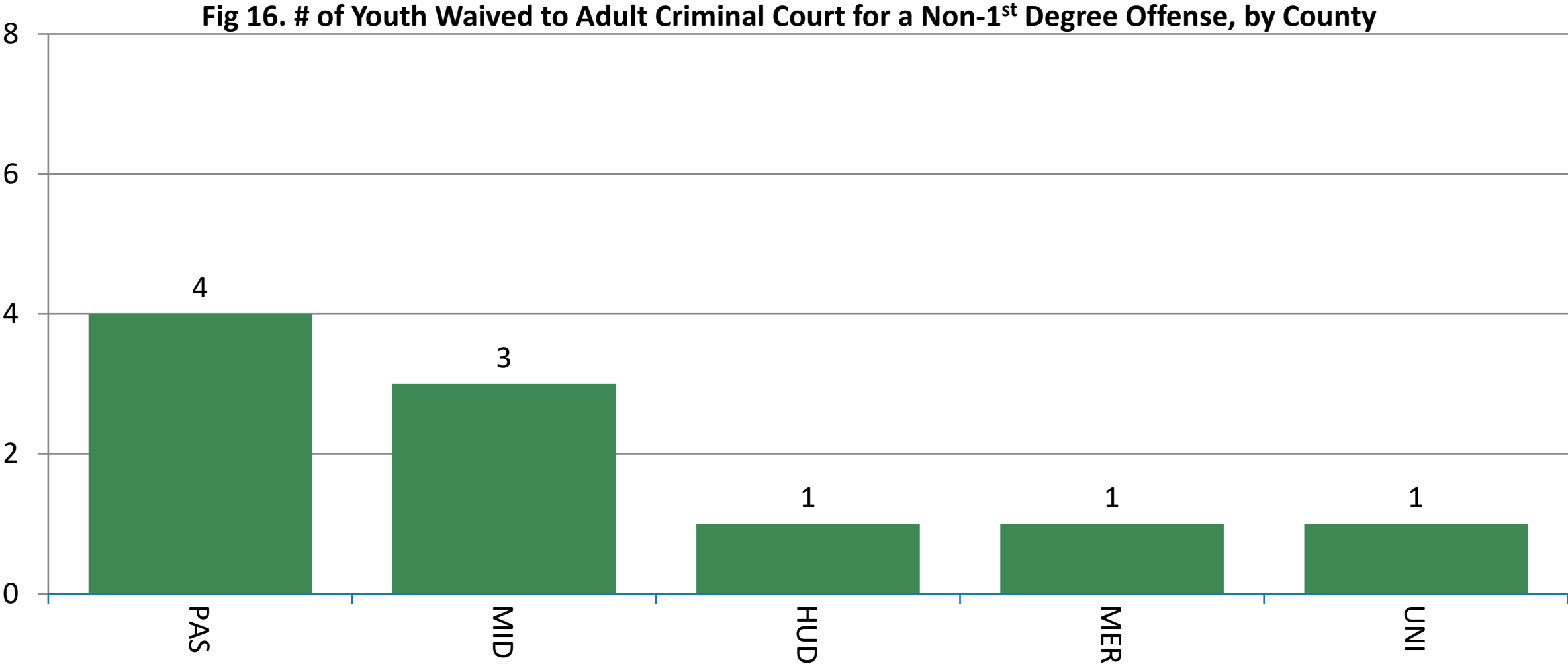


Table 3. Offense Type and Degree	%	#
1 st Degree Homicide	38.8%	31
1 st Degree Sexual Assault- Aggravated	13.8%	11
1 st Degree Carjacking	1.3%	1
1 st Degree Robbery	32.5%	26
1 st Degree False Public Alarm	1.3%	1
2 nd Degree Sexual Assault	1.3%	1
2 nd Degree Assault- Aggravated	7.5%	6
2 nd Degree Luring/Enticing Child by Various Means	2.5%	2
2 nd Degree Weapon	1.3%	1
TOTAL	100.0%	80

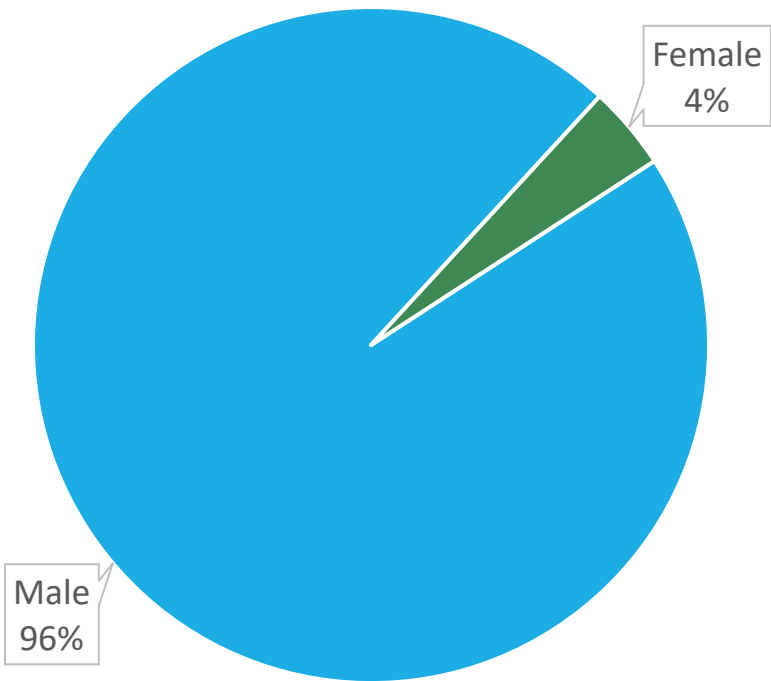
The percentage of waivers granted for something other than a 1st degree offense remained steady between 2018-2019 (12.4%) and 2020-2021 (12.5%).

During 2020-2021, ten waivers were granted for a non-1st degree offense across five counties. This reflects a decrease from 2018-2019 when 14 waivers were granted for non-1st degree offenses across eight counties. During 2020-2021, the county with the most waivers granted for a non-1st degree offense was Passaic (4).



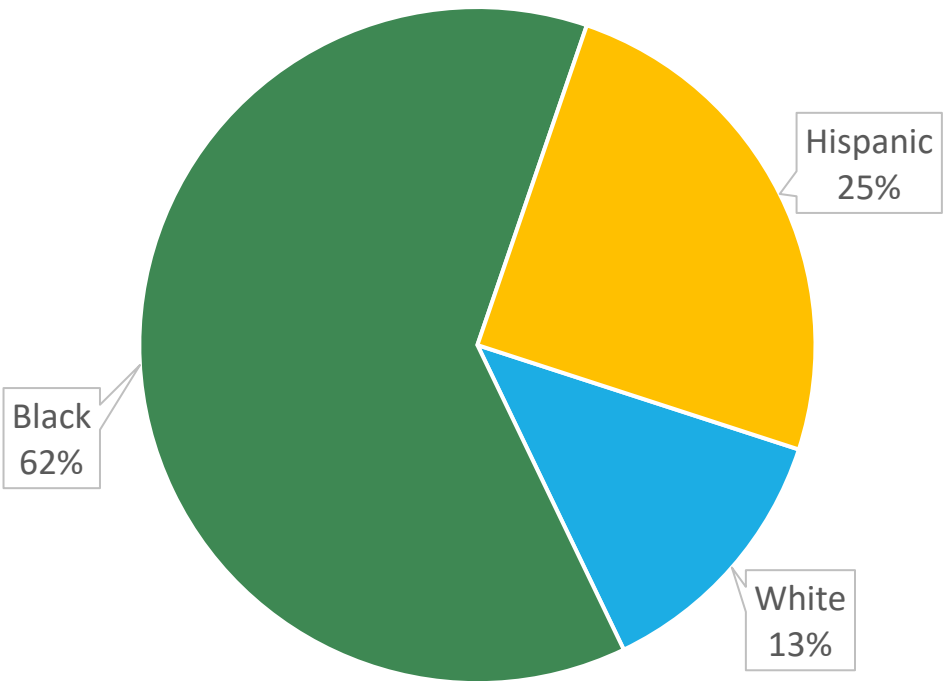
During 2020-2021, the majority of waivers granted were for males (96%) and Black youth (56%).

Fig 17. Gender



In 3 counties, a waiver was granted for females: Camden, Middlesex, and Passaic (1 female in each county).

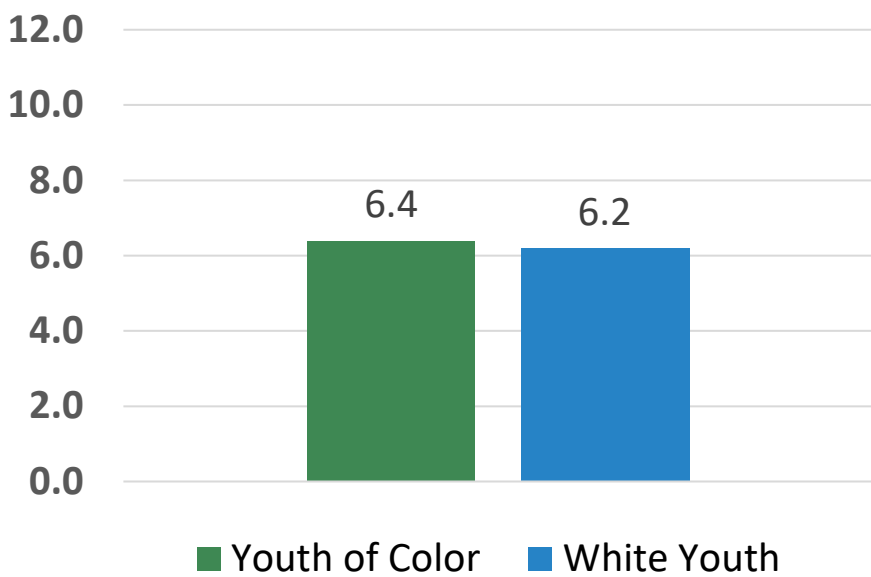
Fig 18. Race/Ethnicity



White youth comprised the majority of waivers granted in Gloucester (100%, 1 youth). Hispanic youth comprised 50% or more of waivers granted in Passaic (13 youth) and Ocean (2 youth). Black youth comprised the majority of waivers granted in all other counties.

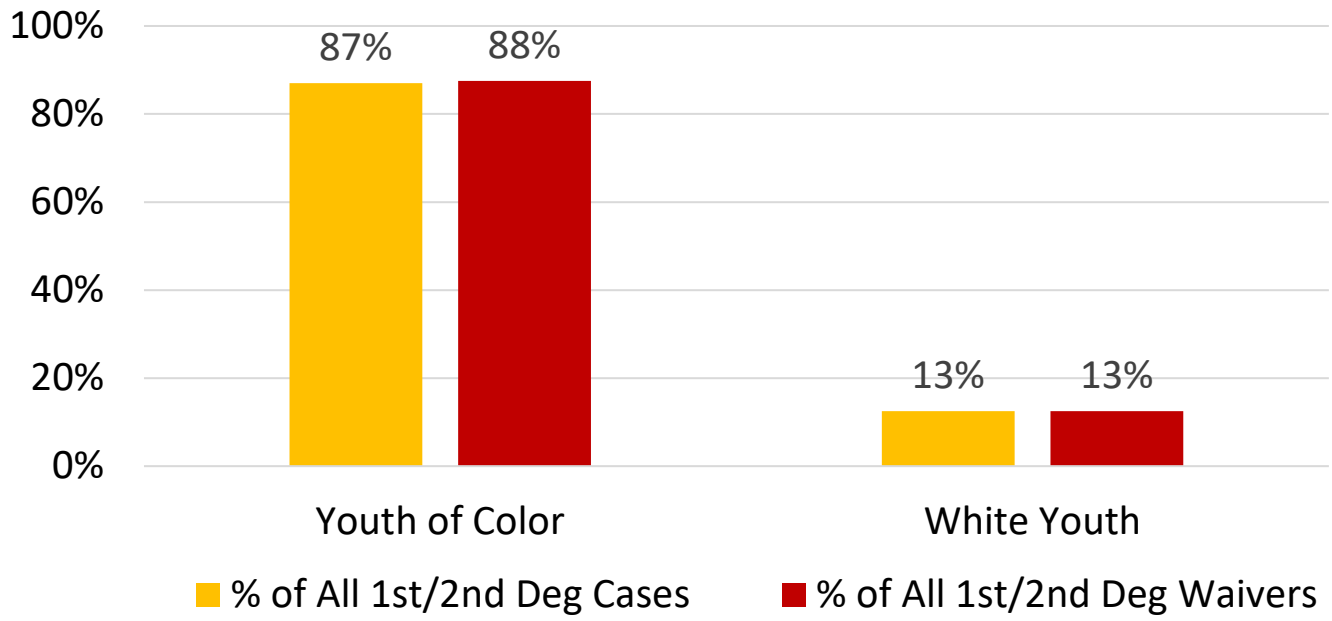
While youth of color represent the vast majority of youth waived, when controlling for severity of offense and considering waiver rates for 1st and 2nd degree offenses only, little evidence of disparity in waiver rates exists for youth of color relative to white youth.

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



For every 100 youth of color charged with a 1st/2nd degree offense in court, 6.4 were waived, as compared to 6.2 of every 100 white youth charged with a 1st/2nd degree offense.

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



Youth of color comprise 88% of all waivers granted for 1st/2nd degree offenses, a figure about equal to their representation among all youth charged with 1st/2nd degree offenses (87%). White youth comprise 13% of all waivers granted for 1st/2nd degree offenses, a figure equal to their representation among all youth charged with 1st/2nd degree offenses.

*Starting in 2020, there was an increase in expungements for juvenile records, including the initiation of a process for automatic expungement of complaints resulting in dismissal. Upon expungement, the case record is immediately removed from the Judiciary case tracking system and is no longer available for analysis. This process has led to a decrease in the recorded number of complaints filed. Therefore, in this slide, the number of youth charged with 1st / 2nd degree offenses generally reflects only charges that did not result or have not yet resulted in expungement.

During 2020-2021, the majority of youth waived to criminal court were 17 years old at the time of the alleged offense (61%); 18% were 15 years old or younger. Most youth had no prior adjudications (55%), with youth averaging 1.5 prior adjudications.

Fig 21. Age at Time of Alleged Offense*

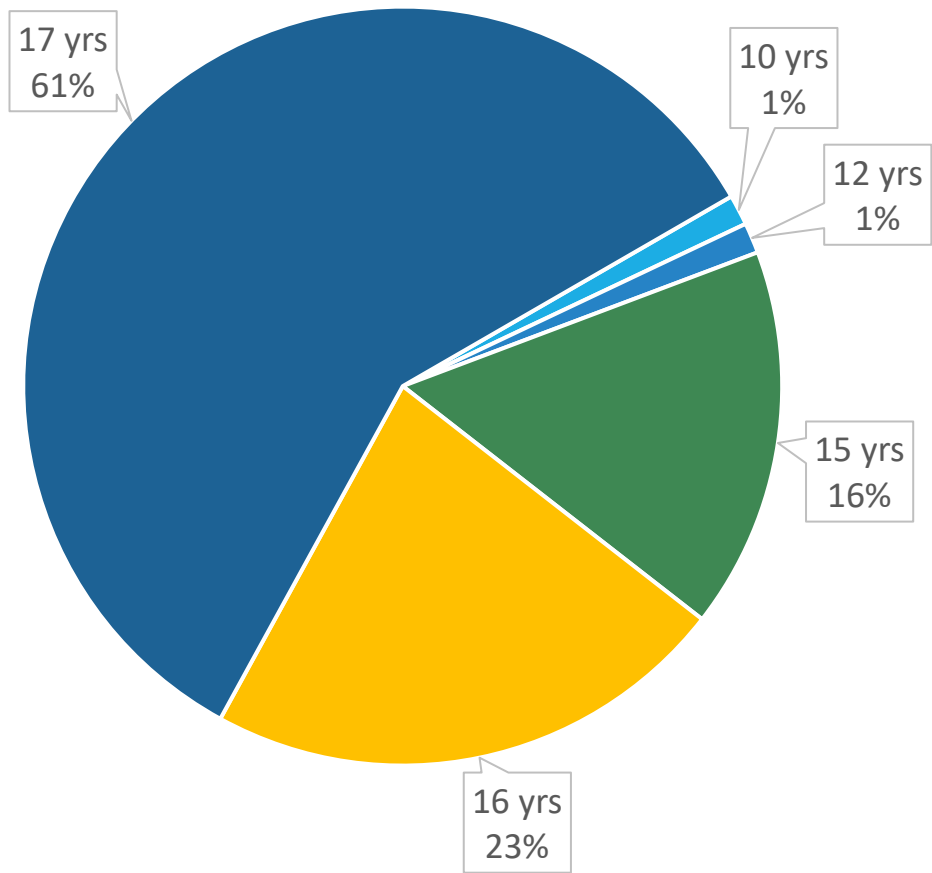
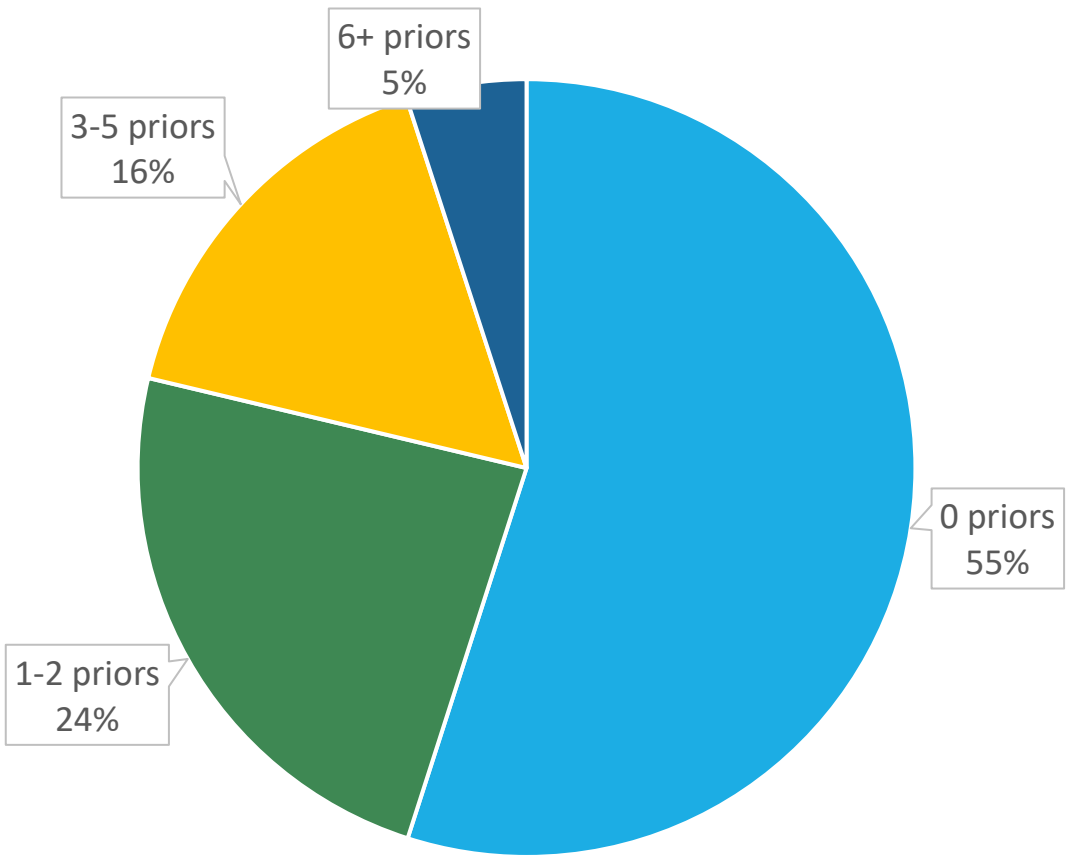


Fig 22. Prior Adjudications

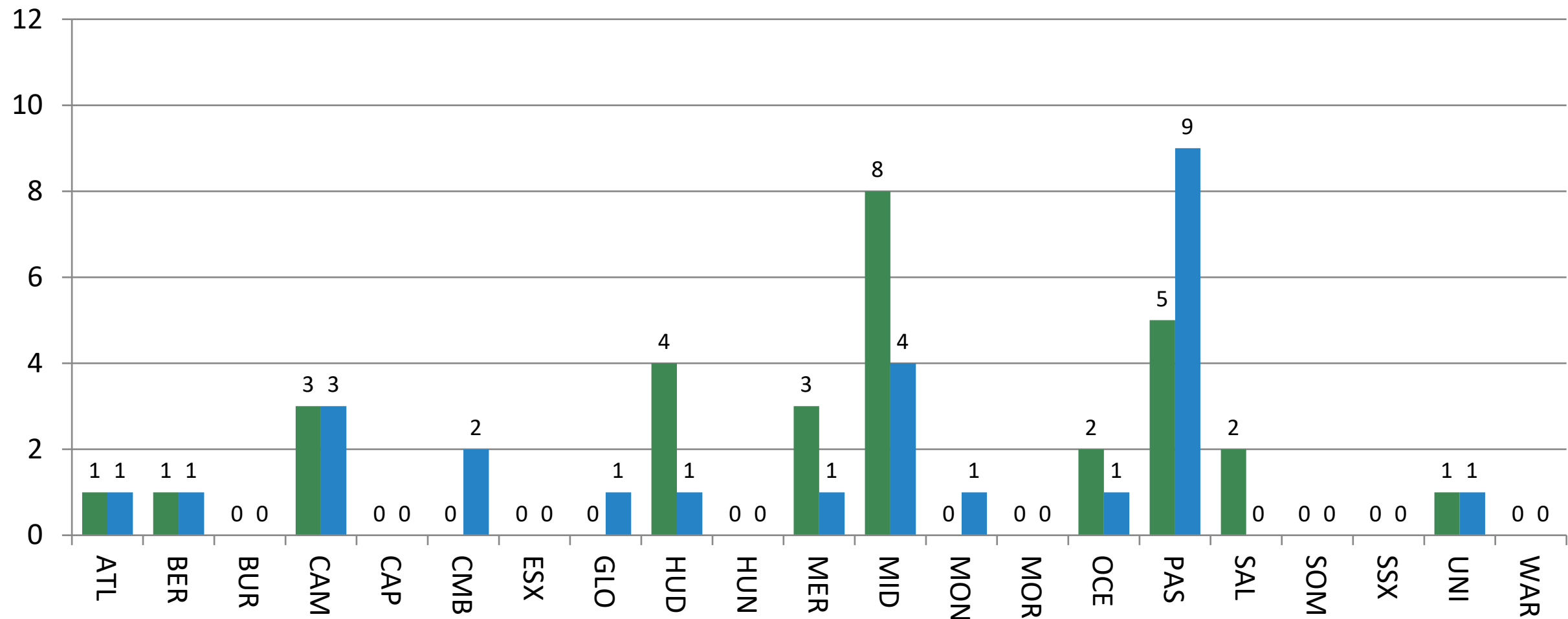


*Regarding the one waived 12 yo and the one waived 10 yo, the conduct for which the youth were charged continued from the ages of 10 and 12, respectively, through an age for which the youth were eligible for waiver. At the time the waiver was granted, these youth were age 16 and 18 respectively.

Waiver Cases Resolved 2020-2021

In 2021, 26 youth had a waiver case resolved in criminal court, down from 30 in 2020, a decrease of -13.3%. In 2020, Middlesex (8) had the most resolved cases, followed by Passaic (5). In 2021, Passaic (9) had the most resolved cases, followed by Middlesex (4 youth).

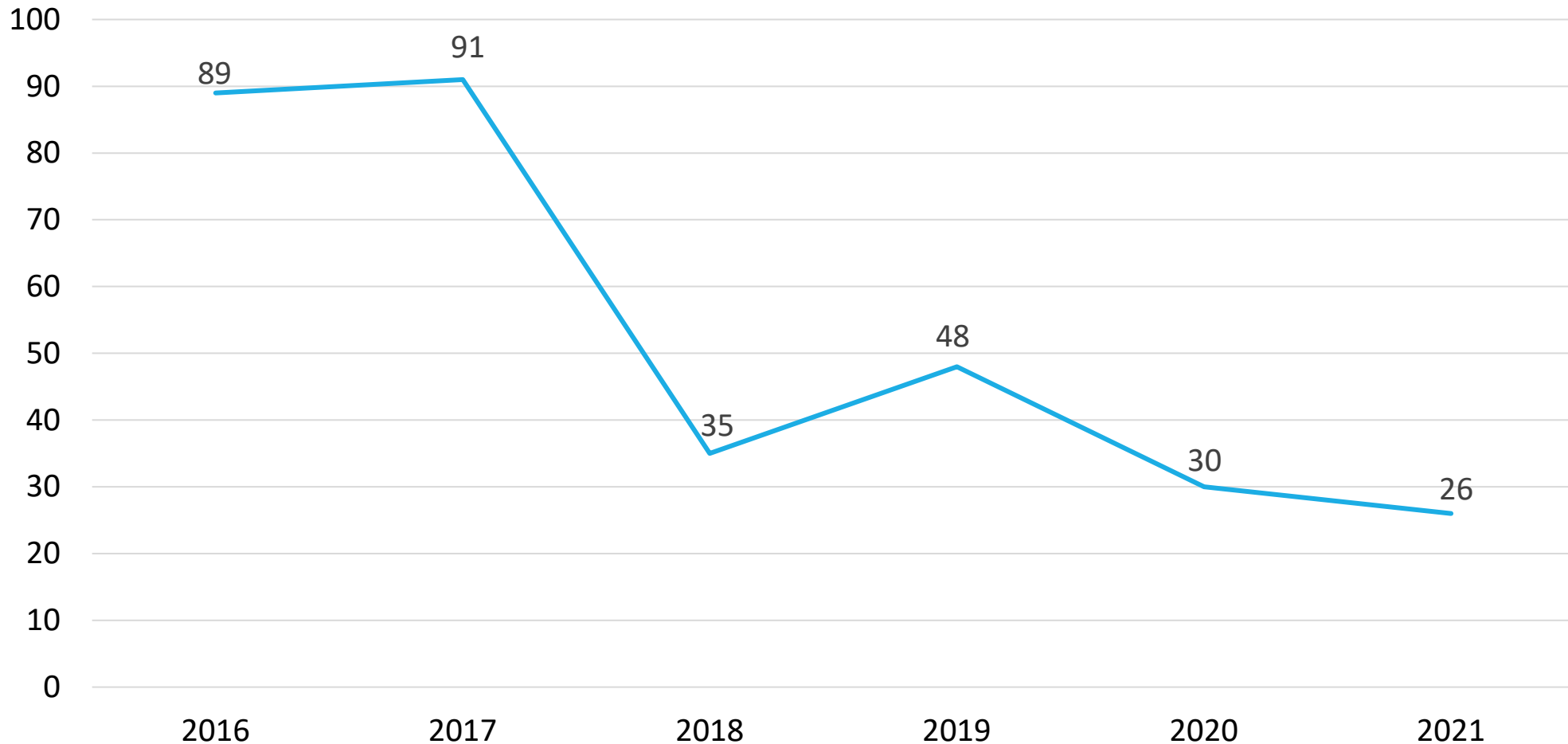
Fig 23. # of Youth with Waiver Cases Resolved in Criminal Court, 2020-2021



*For the purposes of this report, a case is considered resolved in 2020-2021 if the case was dismissed, returned to family court, or resulted in a not guilty finding in 2020-2021, or, for guilty convictions, sentencing occurred in 2020-2021.

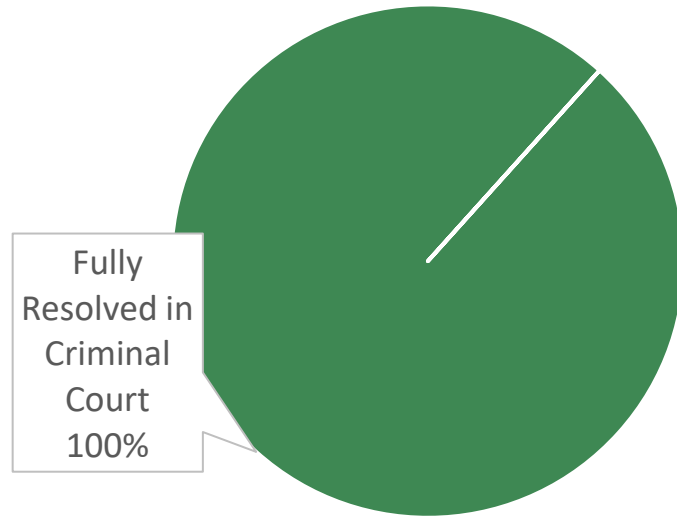
In 2021, there were 26 youth with waiver cases resolved in criminal court, down from 89 youth in 2016 (-70.8%) and down from 30 youth in 2020 (-13.3%).

Fig 24. # of Youth with Waiver Cases Resolved in Criminal Court, 2016-2021



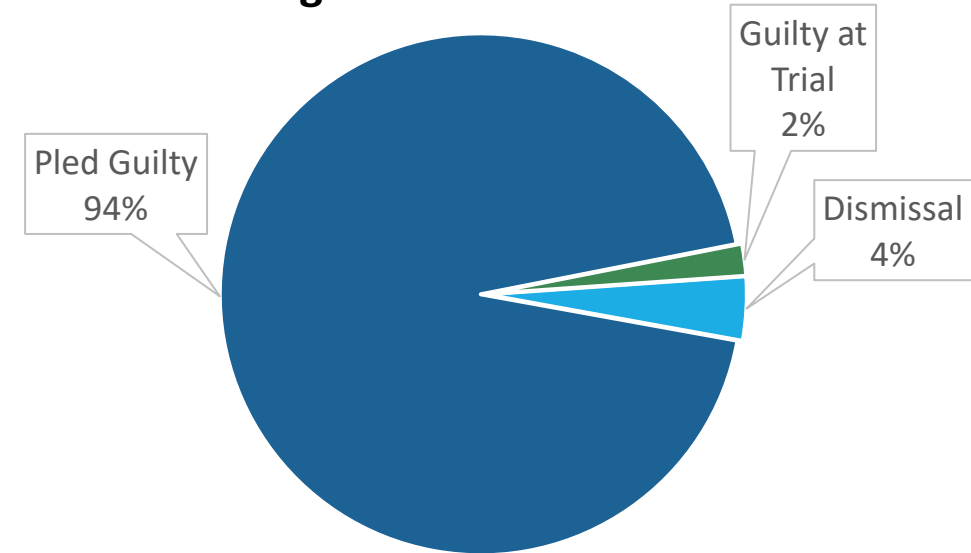
In 2020-2021, all waived cases were resolved in criminal court. The vast majority of youth pled guilty (94%, 44 youth).

Fig 25. Court of Final Resolution



- 100% of case were resolved in criminal court.
- No cases were returned to family court for final disposition.

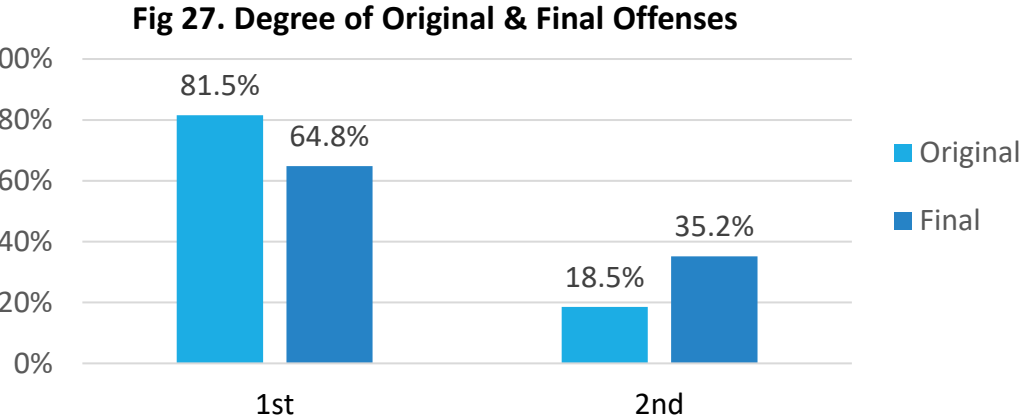
Fig 26. Case Outcome



- Most cases resulted in a guilty plea (94%).
- In two cases (4%) a finding of guilt was not reached as the result of a dismissal. These cases occurred in Bergen (1 youth) and Salem (1 youth).
- One youth (2%) was found guilty at trial.

While 81.5% of waiver cases resolved in 2020-2021 started out as 1st degree offenses, when considering the final charges at the point of final resolution, this figure drops to 64.8%. Homicide comprised 37.0% of charges as originally filed and 25.9% of cases as resolved.

Table 4. Offense Type and Degree	Original		Final	
	%	#	%	#
1 st Degree Homicide	37.0%	20	25.9%	14
1 st Degree Sexual Assault-Aggravated	11.1%	6	11.1%	6
1 st Degree Robbery	33.3%	18	27.8%	15
2nd Degree Manslaughter	1.9%	1	1.9%	1
2nd Degree Assault-Aggravated	9.3%	5	25.9%	14
2nd Degree Robbery	0.0%	0	1.9%	1
2nd Degree Luring/Enticing	3.7%	2	0.0%	0
2nd Degree Weapons	3.7%	2	5.6%	3
Total	100%	54	100%	54



In 17% (9) 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 56 cases, 54 (96.4%) resulted in a term of incarceration either in an adult facility (12.5%) or a juvenile facility (83.9%), with the remaining two dismissed. For the 54 incarcerated youth, the average term length was 7.3 years, ranging from 1.5 to 38 years.

Fig 28. Final Case Outcome

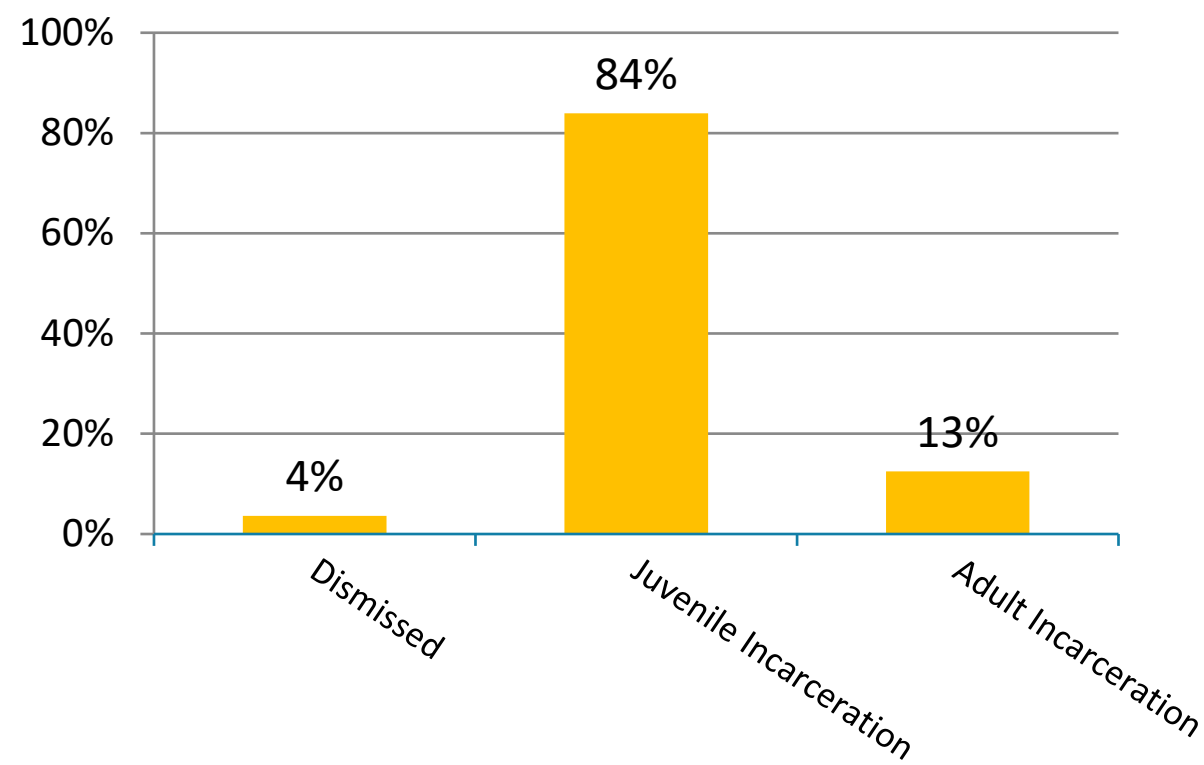
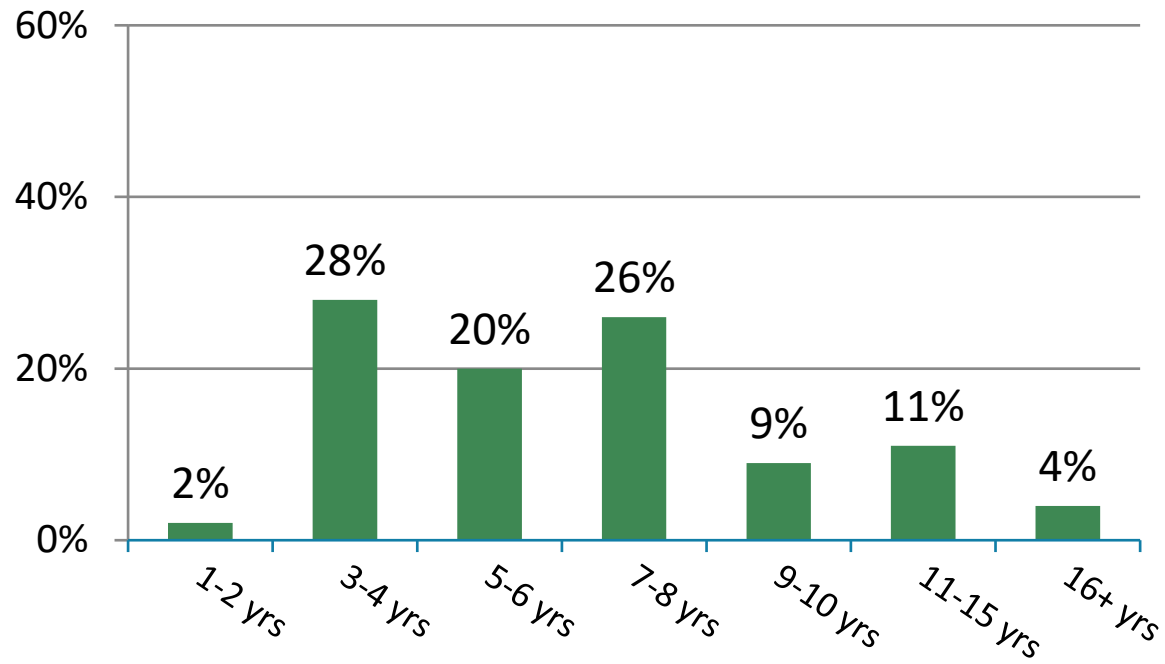


Fig 29. Length of Incarceration



In 5 counties, one or more youth were sentenced to incarceration in an adult facility, including Mercer and Middlesex (2 youth each) and Bergen, Camden, and Salem (1 youth each). In 2020-2021 the percentage of cases resulting in incarceration in an adult facility was 13%, representing a decrease from 31% in 2018-2019. No waived youth received a community-based sentence (e.g., probation).

Youth with waiver cases resolved in 2020-2021 spent an average of 642 days, or almost 2 years, moving through the court process, an increase of 23.2% over 2018-2019 (521 days). For 13% of waived youth (7), the case process lasted 3 years or more.

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

	ATL	BER	CAM	CMB	GLO	HUD	MER	MID	MON	OCE	PAS	SAL	UNI	Total
Docketed to Waiver Granted	250	517	175	84	106	165	142	194	187	174	156	138	229	182
Waiver Granted to Disposition	195	285	394	636	79	471	511	294	8	6	102	246	256	269
Disposition to Sentencing	56	79	243	87	41	146	254	276	689	115	178	17	66	191
TOTAL: Docketed to Final Resolution*	503	889	812	806	782	782	906	764	884	294	437	401	550	642

- On average, time from the date the case was docketed in family court to the date the waiver was granted averaged 182 days, or 6 months. This is a decrease of 16 days from 2018-2019.
- Time from the date the waiver was granted in family court to criminal court resolution averaged 460 days or 15 months. This is four 4 ½ months longer than 2018-2019, when the average was 323 days.

*For the 2 dismissed cases, this total includes time between the case being docketed and dismissal. For all other cases, it includes time between docketing and sentencing.

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 36 in 2020, and increasing slightly to 44 youth in 2021. 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. While youth of color comprise the vast majority of youth waived to criminal court, since 2016-2017, disparity in waiver rates has consistently been reduced. By 2020-2021, there was little evidence of disparity between waiver rates for youth of color and white youth when controlling for the severity of the offense. Local jurisdictions should remain vigilant to ensure that these improvements are maintained.
4. Case processing times for youth waived to criminal court are long. Youth with waiver cases resolved in 2020-2021 spent 642 days – close to two years – moving through the court process, an increase of 23.2% over 2018-2019 (521 days). Identifying strategies to appropriately expedite the case process and eliminate system inefficiencies that contribute to unnecessary delays should remain a priority for justice system stakeholders.