

# The Child Not the Charge:

Transfer Laws Are Not  
Advancing Public Safety

CAMPAIGN FOR

**YOUTH JUSTICE**

BECAUSE THE CONSEQUENCES /

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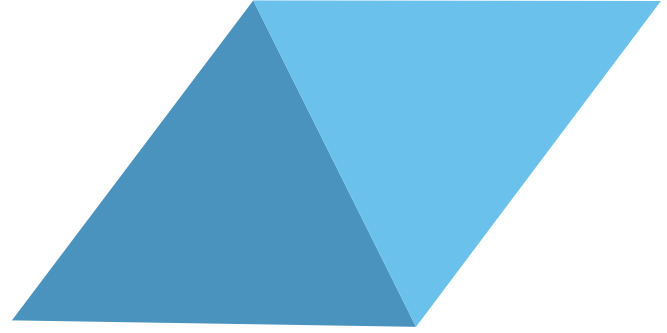
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# Introduction

Over the last 20 years, elected officials and juvenile justice system stakeholders have changed policies and practices to create a more developmentally appropriate youth justice system, resulting in a reduction of the number of confined youth by 60 percent since the 1990s and reducing the number of youth automatically prosecuted as adults by 56 percent since 2007.<sup>1</sup> This change in course is largely the result of policies that restrict the use of secure detention facilities and limit prosecution of youth in the adult court system. These trends in declining youth incarceration rates, while positive, have primarily focused on youth involved in nonviolent offenses. Moreover, despite a significant decline in the overall use of confinement, racial disparity in the juvenile justice system has worsened in many jurisdictions. This is due, in large part, to the fact that too many jurisdictions still rely on confinement and transfer to the adult system for youth who engage in violence. The research clearly shows that youth are best served in the least restrictive setting, regardless of underlying offense type. However, state practices frequently do not follow these lessons, turning to secure settings and transfer to the adult criminal justice system when other interventions would be more effective at addressing the underlying cause of the behavior and delivering a better public safety return on investment. Instead, these punitive practices worsen racial disparities, saddle youth with the collateral consequences of a criminal record if they are prosecuted in the adult criminal justice system, and contribute to recidivism.

# History

***The “tough on crime” era ushers in transfer mechanisms that increasingly treat youth as adults.***

The youth and adult criminal justice systems are fundamentally different. The purpose of establishing the juvenile court 120 years ago was to develop age-appropriate rehabilitative responses in recognition of the developmental differences between children and adults. Since the founding of the juvenile court system, crimes committed by children below the legal age of majority were mostly handled in those courts. The juvenile court’s role has evolved as an expanding portfolio of research reinforces the principle that children do not have fully-developed decision making skills, lack requisite impulse control, and are more amenable to rehabilitation than adults. Thus, their culpability for crimes is different than adults, and there is recognition that they should be subject to different laws, different courts, and a distinct set of correctional responses. However, during the “tough on crime” era of the 1980s and 1990s, lawmakers eroded the barrier between the adult and juvenile justice systems and pushed for more punishment at the expense of rehabilitation. This included both more punitive responses within the juvenile justice system as well as enacting laws that allowed for transfer of youth into adult criminal court and housed in adult correctional facilities for certain crimes defined as serious.<sup>2</sup> That meant that a young person would face adult punishment for their crimes, carrying the stigma of that crime for the rest of their lives, hampering their ability for future education, stable housing, and a steady career. Further, young people increasingly faced placement in adult correctional facilities exposing them to substantially higher risks of suicide and sexual assault.<sup>3</sup>

This movement to increasingly rely on adult courts for serious crimes was in reaction to public and political pressure for certainty in sentencing in the 1990s. Violent crime rates were growing through the 1980s and media coverage of isolated incidents of young people committing very serious crimes fueled an environment where some children, particularly youth of color, were characterized as “super predators”.<sup>4</sup> This drove the effort to send more youth to adult court to face serious, often lifetime punishment. Survey research during that time showed that the public favored adult court for serious crimes, with 75 percent believing that violent offenses should automatically be transferred to adult criminal court.<sup>5</sup>

Between 1992 and 1996, 43 states and the District of Columbia changed transfer and statutory exclusion laws out of concern that the juvenile system was ill-equipped to respond appropriately to youth criminal behavior. In the same timeframe, all but 10 states adopted or modified laws making it easier to pursue adult prosecution for youth under age 18. As a result, every state now has at least two mechanisms to place youth in the adult system.<sup>6</sup>

# Pathways to Transfer:

**Lower Ages of Criminal Responsibility:** Laws that establish the age of criminal responsibility below 18. Nature of the crime not considered—original jurisdiction for all crimes is in adult criminal court. Only three states still have the age of criminal responsibility set at 17. In 2015, 66,700 youth were automatically prosecuted in adult court due to these statutory requirements.

**Statutory Exclusion** – Laws automatically disqualifying youth from having their cases tried in juvenile court.<sup>7</sup> Such practices prevent judges from considering any mitigating factors arguing for keeping the case in juvenile court. Twenty-six states have a type of statutory exclusion law applying to certain offenses.<sup>8</sup> Arizona, Connecticut, and Pennsylvania automatically transfer youth starting at age 15 for some robbery and assault charges. New York does so at 14 years old and Georgia transfers at just 13 years old. In 2015, 6,000 youth were transferred into the adult system by mandatory transfer, with one-third coming from Arizona, California, Florida, Michigan, and Washington State.

**Judicial Waiver** – A judge may choose to transfer a youth to adult court after a court hearing. This type of transfer is quite common in state statutes, with 44 states having laws that allow the practice. However, it is not utilized frequently, with only 3,200 youth judicially-waived in 2015.<sup>9</sup> Most states allow for judicial waivers after a youth reaches the age of 13. Alaska joins 15 other states in allowing waivers without specifying a minimum age requirement. In waiver decisions, judges may have full discretion on the decision whether to transfer; however the waiver may also be presumptive, or even mandatory in 12 states.

**Prosecutorial Direct File** – Prosecutors can file the case of a youth directly in adult court with the consent of the judge through executive authority. This is a practice in 12 states and the District of Columbia.<sup>10</sup> Many states give the option for prosecutors to file a case directly in adult court at the same age as judicial waivers, with nine states providing this option for youth under 14 years old.

**Juvenile Blended Sentencing** – Originally intended to allow courts the flexibility to rehabilitate youth in the juvenile system while remaining tough on crime in the 1980s and 1990s, juvenile blended sentences have resulted in many young people receiving adult sentences in juvenile courts.<sup>11</sup> The practice has evolved into a way for adult sentences to reach youth who are too young to be transferred otherwise. Fourteen states currently use this sentencing scheme.

**“Once an Adult” Provisions** – If a youth is transferred, this provision requires that any subsequent offenses are tried in the adult court. Today, 31 states have adopted ‘once an adult’ language in their criminal code. While most states require that the first transfer results in a conviction to activate the provision, some only require court certification.<sup>12</sup>

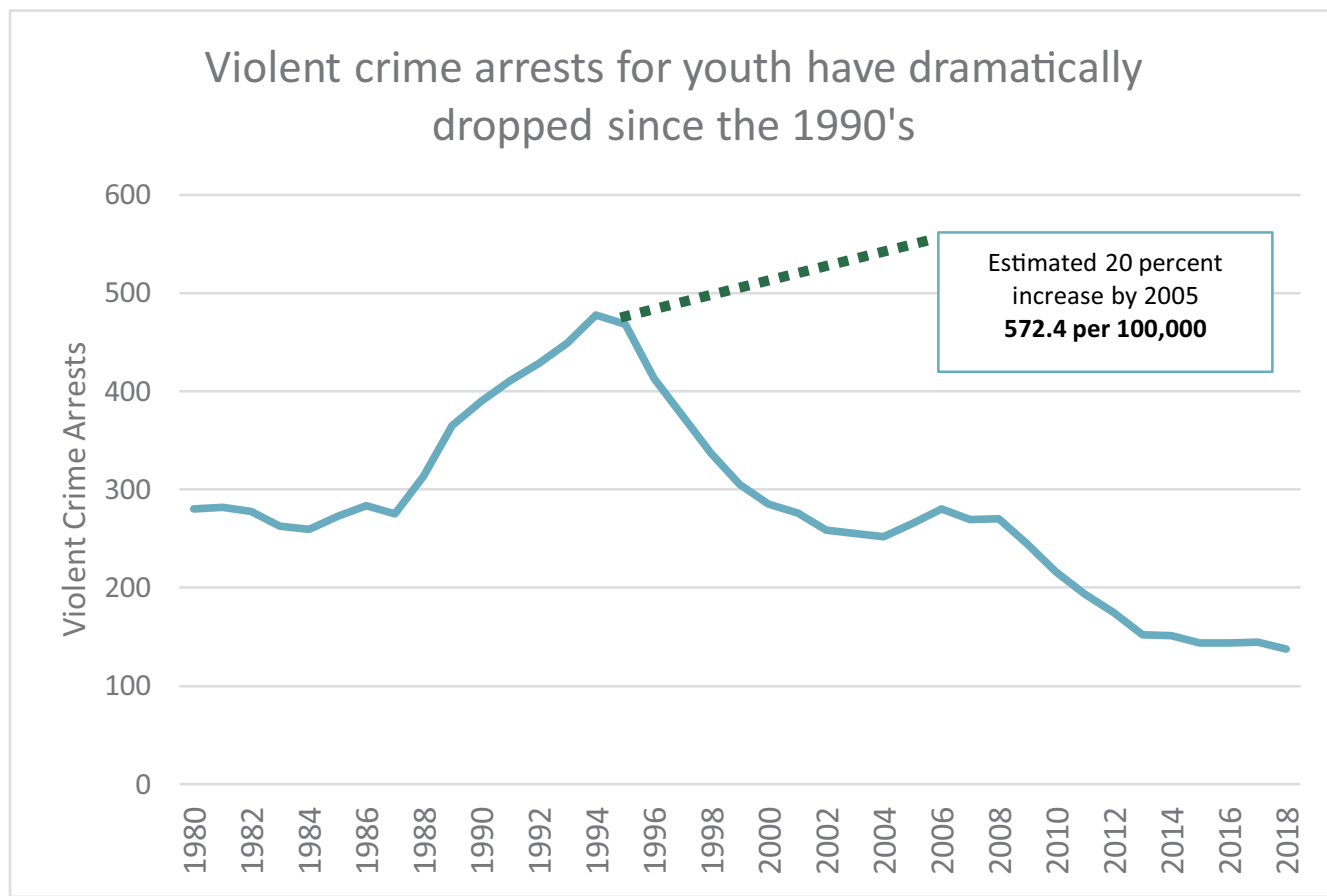
**Role of Weapons** – The possession or use of a firearm during the commission of a felony can impact the determination of the court system. In many cases it can lower the minimum age for transfer or activate a mandatory minimum sentence. Thirty-one states have statutory language about a firearm’s involvement in a commission of a robbery and 28 states for aggravated assault. New Mexico is the only state where a firearm does not prompt a transfer mechanism for robbery or aggravated assault. Simple possession of a firearm can result in an offense being defined as violent and lead many kids into the adult justice system.



# Reforms begin

*As crime drops, states gradually expand options to serve some youth in the juvenile justice system.*

In the mid-1990s, during this national push to subject children who have committed serious crimes to adult punishment, it was projected that violent offenses by children would continue to rise another 20 percent by the year 2005. In fact, the opposite occurred. In 1996, violent crime was at a rate of 413 per 100,000 youth. By 2005, that rate was almost cut in half to a rate of 265 per 100,000 youth, and by 2016 was at a rate of 144 per 100,000.<sup>13</sup> (Table A)



The original estimate that violence would continue to increase through the decade contradicts the robust findings emerging from the groundbreaking Pathways to Desistance research.

This work concluded that a youth's involvement in violence is not predictive of future delinquent or criminal behavior.

A seven-year long study of 1,354 youth found that participants had similar delinquency outcomes regardless of whether they committed a violent or non-violent act. Only a small percentage, fewer than 10 percent, continued to engage in criminal behavior through their adolescent and adult years.<sup>14</sup>

In 1995, over 100,000 youth were confined in the juvenile system. The latest numbers reveal a 60 percent decrease as of 2017.<sup>15</sup> This trend was driven by a number of factors, including declining arrest rates, and changes in policy and practice spurred on by advocacy efforts to return the juvenile justice

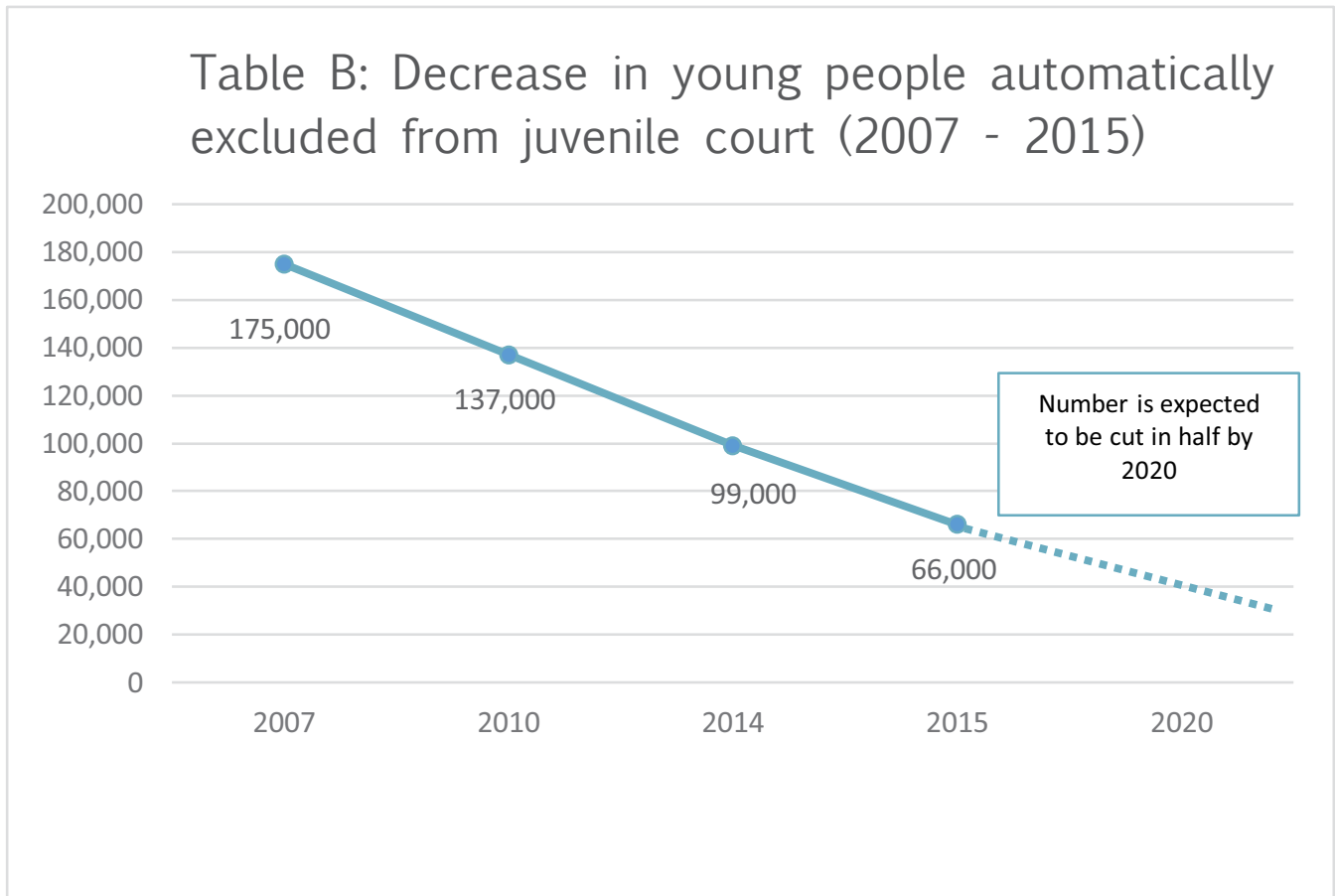
system to its founding principles focused on treatment and rehabilitation. The decline in youth incarceration was primarily focused on youth who committed status offenses or low level misdemeanors, leaving a much smaller population in both detention and commitment facilities and opening up opportunities to bring some youth back from the adult justice system.

Research has demonstrated how community-based interventions that eschew confinement for treatment were more effective at preventing future offending than simply locking up young people. Thus, more youth have remained in the juvenile justice system to receive developmentally-appropriate treatment, fewer are held in confinement, and fewer still are prosecuted in the adult system—particularly those charged with drug offenses and misdemeanors.

# Raise the Age (RTA)

In 2007, there were 14 states that automatically prosecuted youth under 18 in the adult court system. At the time, Connecticut's adult jurisdiction included 16 year olds. In 2007, they raised the age to 18 and subsequently created a roadmap for other states to follow. Since that time, nine other states followed the guidance, including the two remaining states, New York and

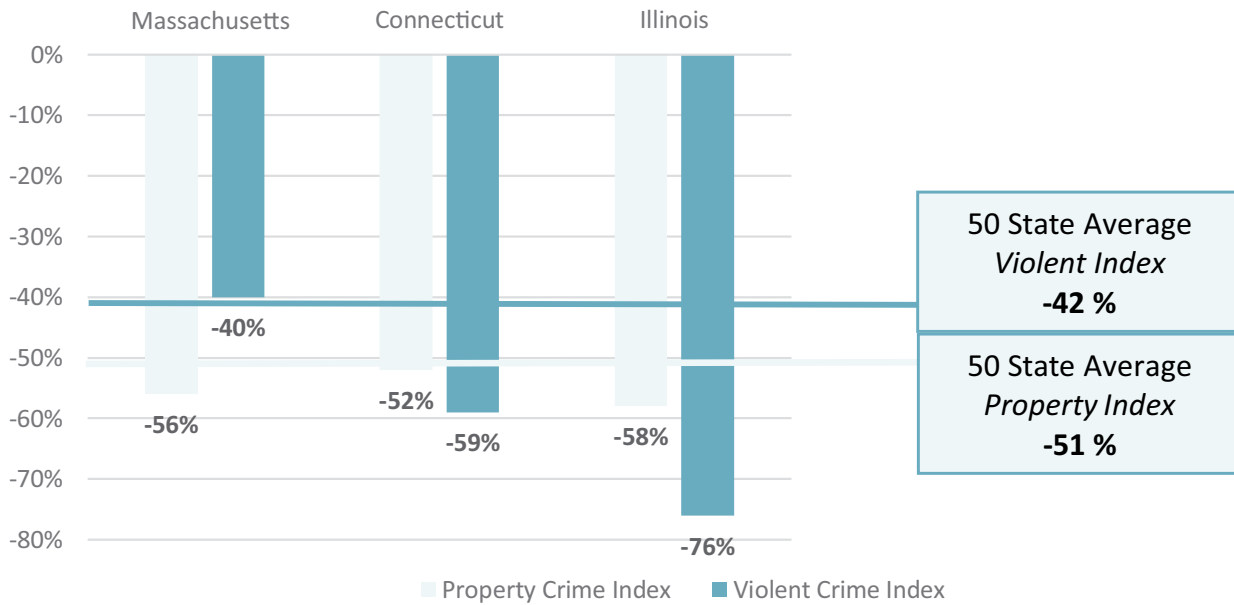
North Carolina, that had automatically prosecuted 16-year-olds as adults. Raising the age of criminal court jurisdiction has led to a decline in the number of youth in the adult system from 175,000 in 2007 to 66,000 by 2015. Projections are for that number to be halved by 2020.<sup>16</sup> (Table B)



The *raise the age* states reformed their continuum of care to focus on community-based interventions and developed policies and practices that relied on use of the least restrictive settings. Over the years, these first-generation

*Raise the Age (RTA) states*, Connecticut, Illinois, and Massachusetts, reported arrest, confinement, and fiscal outcomes that either outperformed or were consistent with the rest of the country. (Table C)

Table C: The states either outperformed, or remained consistent with the rest of the country in reducing the number of arrests between 2005 and 2017



In addition to putting in place smart policies that were supported by the evidence, states saved money as a result of raising the age. Connecticut projected a \$100 million increase to the Department of Children and Families’ budget, the entity that is tasked with administering juvenile justice services, because of taking on older youth. The increased costs never materialized and instead, the child welfare and court system reinvested \$39 million in savings in community-based approaches.<sup>17</sup>

These efforts were buttressed by a growing body of empirical research highlighting that the brain continues to develop past adolescence into the mid-20s. As a result, decision making, impulse control, and culpability are limited among children and young adults (18 to 24 years of age) relative to older adults. This has led some states to consider expanding raise the age efforts beyond 18. Vermont was the first state to raise the age of criminal responsibility to age 20.

As of 2019, only three states remain that set the age of criminal responsibility at 17 years old:

- Georgia
- Texas
- Wisconsin

Raise the age reforms in every state included misdemeanor and some felony charge; however, most also “carved out” older youth who had been charged with felonies, many for crimes of violence. These decisions mirrored other states that had already established 18 as the age of criminal responsibility. In Connecticut and Illinois, after raising the age—further reforms were passed that narrowed which youth were eligible to be transferred to the adult system or excluded from juvenile court.

## Raise the Age Impact: New York

As of June 2019, 73 percent of all violent felonies in New York State have been returned to family court jurisdiction to be handled as a juvenile delinquency case. While carve-outs exist, they have not greatly limited the family court’s scope. Prior to the 2017 Raise the Age legislation, those youth would have been tried and sentenced in the adult court.

Source: N.A., New York State Raise the Age Implementation Task Force: Raising the Age of Criminal Responsibility – First annual report (Albany, NY: Governor’s Office, 2019).



# Transfer Reforms

## Reforms have Primarily Reduced the Number of Youth Charged with Non Violent Offenses

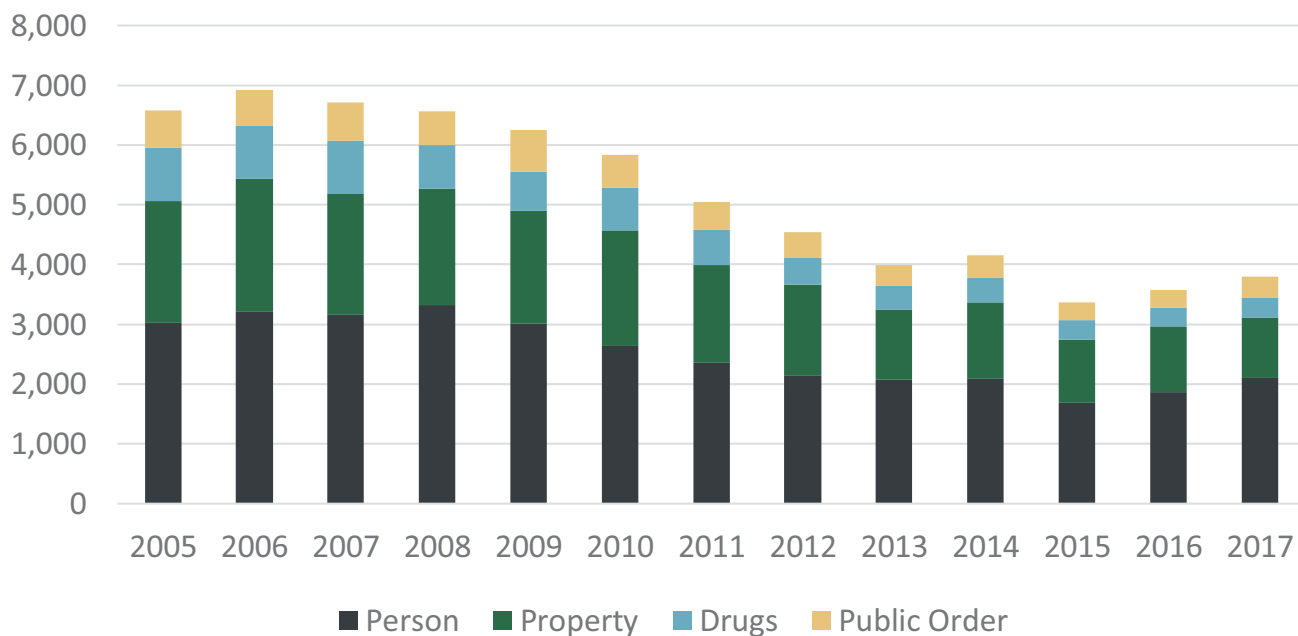
While raise the age reforms have brought the country closer to the agreement that 18 should be the minimum age that youth are considered adults, every state and Washington, D.C. still exclude some youth from juvenile jurisdiction who are younger than 18. This includes laws that statutorily exclude some youth based on age and crime, mandatory judicial waivers, prosecutorial discretion, “once an adult, always an adult” provisions, blended juvenile sentences, or role of firearms.

Since 2009, 22 states have narrowed their automatic/mandatory transfer provisions, and returned discretion to juvenile court judges. Six states have eliminated an entire transfer mechanism from their laws (California, Florida, Kansas, New Jersey, Oregon, Rhode Island); and 11 states have “raised the floor”—or removed younger youth from transfer eligibility. Others, including Delaware, Illinois, New Jersey, Nebraska, Utah have removed specific crimes from eligibility, including some crimes categorized as violent.

While these reforms impact a much smaller youth population (it is estimated that approximately 10,000 youth are statutorily excluded or waived to adult court annually, or 12 percent of all youth in adult court)—they are important in reinforcing that the juvenile court is the appropriate response to even serious youth crime.<sup>18</sup> While research has shown that the most expedient form of transfer is when judges review on a case-by-case basis, it is important to note that judicial review is still happening in only one-third of the cases that are transferred to adult court.<sup>19</sup>

Despite these advancements, judges are still transferring nearly half of youth to adult court for charges involving property offenses, drugs, and public order violations. It was just in the past year or two, that about half of all cases waived by judges involved more serious or violent crimes. (Table D)

Table D: Youth waived to adult court by judges







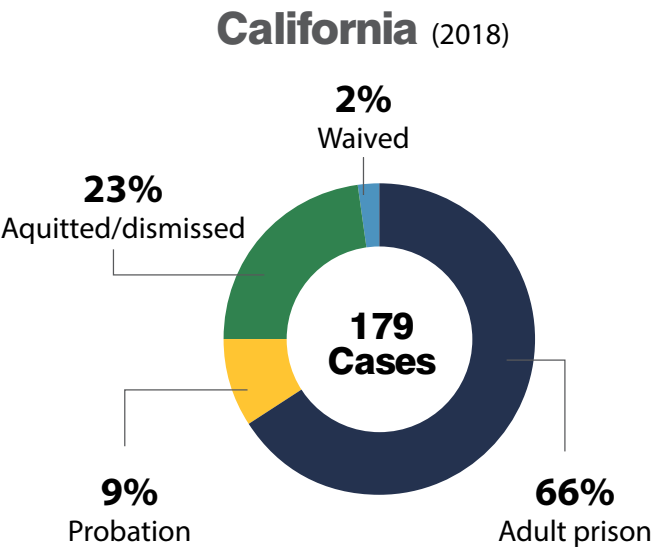
# Problems persist

## Despite Reforms, Serious Problems Persist with Transfer

### Adult Findings Don't Indicate Youth Pose Public Safety Risks

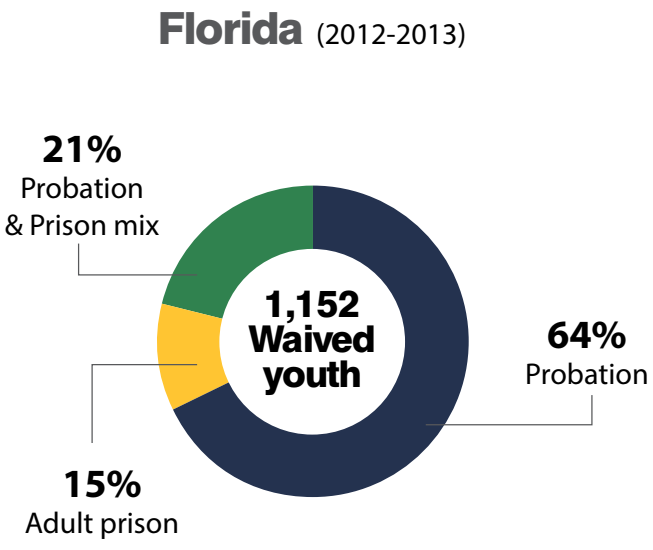
Across states, there is an alarming lack of data about youth in the adult system. Only six states reported outcomes of those who were transferred to the adult court. While it does not paint a comprehensive picture across the country, the reporting data does reveal that most cases do not result in prison time. This poses questions around the seriousness of their offense, and whether they should have been kept under the jurisdiction of the juvenile system the entire time.

Table E: Adult sentences for transferred youth by state



**California:** In 2018, there were 179 cases disposed. 111 were for violent offenses.

<https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Juvenile%20Justice%20In%20CA%202018%2020190701.pdf>

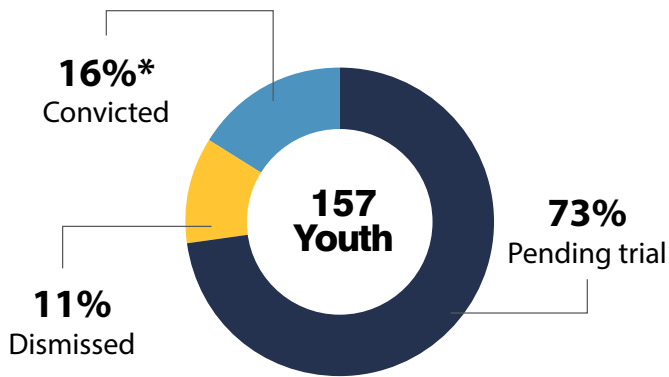


<https://oppaga.fl.gov/Documents/Reports/17-06.pdf>

**Florida:** In 2012-2013, there were 1,152 cases direct filed to adult court; only 65% led to convictions.

Table E: Adult sentences for transferred youth by state

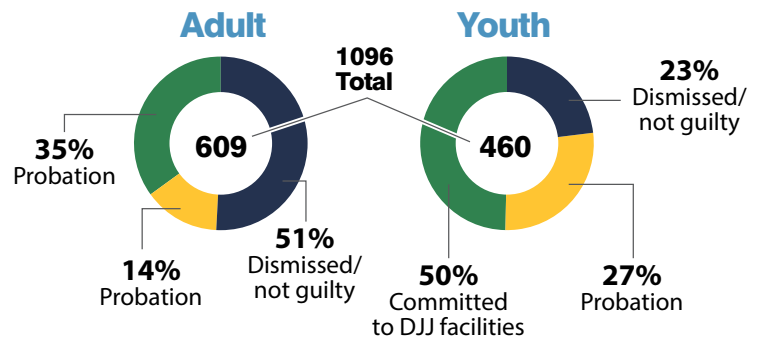
**Indiana** (2019)



**Indiana:** In 2019, of the 157 cases in adult court, 123 were a result of direct file. Top charges were armed robbery and robbery. While a small percentage of cases were disposed, most received a sentence other than prison\* (35% probation; 21% supervision; 42% prison).

<https://www.in.gov/cji/2370.htm>

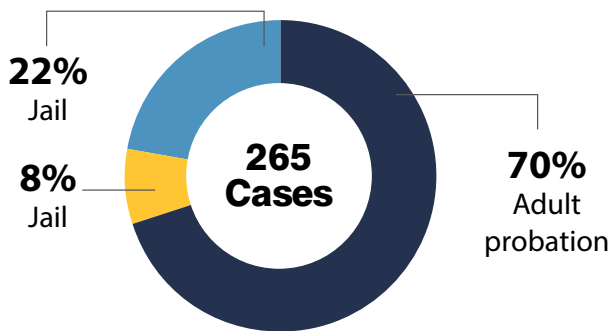
**Maryland** (2012-2017)  
(Baltimore)



**Maryland:** In 2016, Maryland sent 691 youth at adult court; 216 from Baltimore. Sentencing data is only available in Baltimore over a 5 year span. Slightly more youth were kept in the adult system than returned to the juvenile system over the five years. Outcomes varied widely between the two systems.

*Cite:* <https://assets.documentcloud.org/documents/4564543/Juvenile-Justice-Report-6-26.pdf>

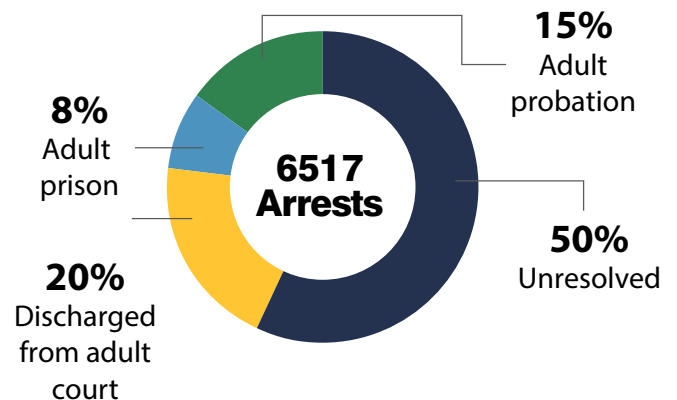
**Nebraska** (2017)



**Nebraska:** In 2017, Nebraska had 265 youth charged as adults, 29% were for traffic offenses, 43% for misdemeanors, and 27% for felonies.

<https://supremecourt.nebraska.gov/sites/default/files/jssar.pdf>

**New York** (2016)



**New York:** Prior to raising the age, all 16-17 year olds in NY were considered adults. Of the felony arrests, only 8% went onto prison.

[https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS\\_RTA\\_Task\\_Force\\_First\\_Report.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RTA_Task_Force_First_Report.pdf)



**Research has found that 95 percent of youth sentenced as if they were adults will be home by their 24th birthday.**

Based on a snapshot of states for the outcomes of transferred cases, it appears that some youth tried as adults end up on adult probation or receive jail time (less than one year); calling into question whether the initial charges were serious enough to warrant transfer.

Even when looking at the crimes of violence, most youth are not receiving long sentences. As JPI discussed in a 2016 report *Defining Violence*, a contributing factor to so many youth being excluded or transferred may be tied to our society's expansive definition of what is violence. In some states the burglary of an empty garage is a crime of violence, even though it doesn't involve physical harm to a person. JPI also found that the presence of a weapon, whether or not it was used in a crime, can also increase the sentence that an individual will face.<sup>20</sup> These same findings apply to young people. Research has found that 95 percent of youth sentenced as if they were adults will be home by their 24th birthday—lining up nicely with the age/crime desistance

### ***Transfer laws worsen existing racial and ethnic disparities***

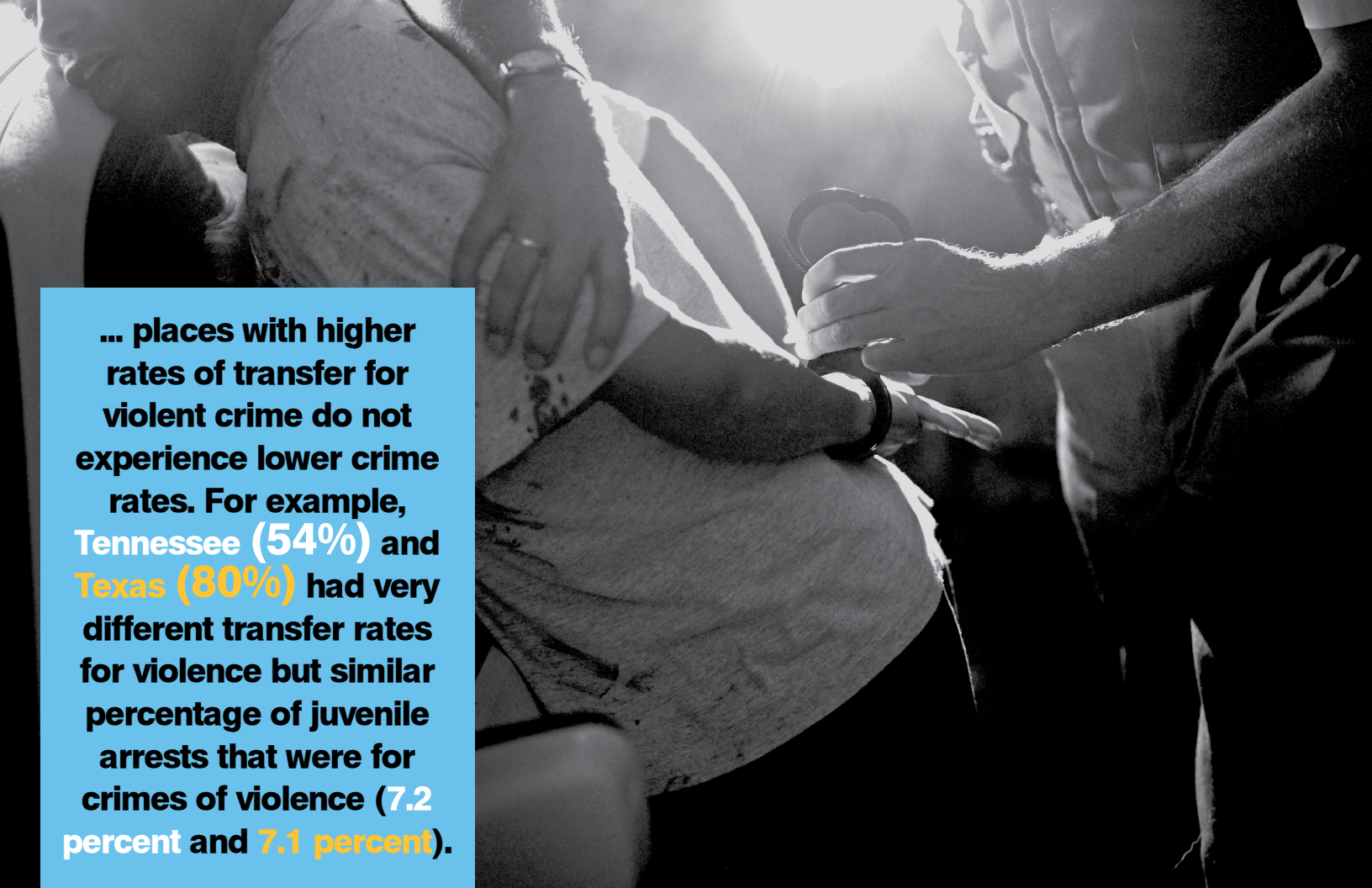
As the overall numbers of transfers decline, the proportion comprised of violent crimes has grown. While some states have partially reformed these harmful transfer policies, every state continues the practice for certain age groups and offense categories regardless of an individual's risk of reoffending or what is in an individual's best interest. These policies exacerbate longstanding racial disparities. Despite all of the recent reforms intended to improve the juvenile

curve.<sup>21</sup> Moreover, 85 percent will be home by the time they are 21, which means that they could be served, with a rehabilitation frame, in the juvenile justice system in all but six states<sup>22</sup> who end juvenile extended jurisdiction prior to age 21.

While the above reforms are moving states in the right direction, young people who commit acts of violence are still likely to be placed in secure confinement in the juvenile system or transferred into the adult system, regardless of their risk level or outcome of their case. This is problematic because research has shown that secure detention has diminishing returns for young people, and that youth transferred to adult court are more likely to recidivate with more serious crimes. California, Colorado, Indiana, and Maryland are trying to address this issue through a reverse waiver that grants judges the discretion to waive youth back to juvenile court for adjudications if they plead to something lower than what initially excluded them from family court.

justice system, judicial waivers in 2017 were the most racially disparate in 40 years.<sup>23</sup>

State data provide a window into these worsening racial and ethnic disparities. For example, in Florida, of the 1,115 youth under 18 years of age certified to adult court, 79 percent were youth of color. Similarly, of the 677 transferred for a violent offense, 81 percent were either Black or Latinx.



**... places with higher rates of transfer for violent crime do not experience lower crime rates. For example, Tennessee (54%) and Texas (80%) had very different transfer rates for violence but similar percentage of juvenile arrests that were for crimes of violence (7.2 percent and 7.1 percent).**

These numbers indicate that, while youth transfers are being used less often, an increasing percentage of youth sent to the adult justice system are young people of color sentenced for a violent offense, despite findings that youth of color are engaged in acts of violence at similar rates than white youth.<sup>24</sup> This is consistent with racial disparities seen throughout the system, where youth of color are treated more harshly at each point of the system (arrest, pretrial detention, disposition, placement in confinement and transfer to adult court), resulting in increased racial disparities the deeper one goes into the system.<sup>25</sup>

## Outcomes remain poor

While it may appear to be a wise allocation of resources to preserve the most restrictive setting and most punitive treatment for the most harmful offenses, research shows that this approach goes a long way toward harming young people with little return on investment as it pertains to public safety. While transfer mechanisms were designed for the most serious cases, they

are often triggered by sentencing enhancements, including the possession of a firearm that does not involve an act of violence. Moreover, these practices have a detrimental impact on safety within facilities, damage reentry prospects, and worsen existing racial and ethnic disparities.

### Public Safety Outcomes

The intended goal of transfer of youth to adult court was to increase public safety. The reality has been far more complicated. There is clearly no pattern between transfer mechanisms and reductions in violent crime. Looking across the states that provide data, it is clear that places with higher rates of transfer for violent crime do not experience lower crime rates. For example, Tennessee and Texas had very different transfer rates for violence (54 percent and 80 percent), but similar percentage of juvenile arrests that were for crimes of violence (7.2 percent and 7.1 percent). Several studies indicate only one state experienced a decline in crime as a result of transfers, and a few actually indicated a correlation with an increase in crime.<sup>26</sup>

Nationally, there are very few states that report all adult transfers (regardless of mechanism) that are broken down by the offense category. This data is analyzed with caution due to the lack of information on outcomes. However, it is a representation that their percentage of violent crime varies dramatically, showing no correlation between the two.<sup>27</sup> (Table F)

Table F: Transfer correlation to Youth Arrests for Crimes of Violence

State	Percentage of Violent Crime Transfers	Percentage of Youth Violent Crime Arrests
Arizona	82%	5.5%
California	73%	16.8%
Florida	59%	6.7%
Indiana	81%	7.0%
New Jersey	56%	7.6%
Ohio	66%	4.4%
Oregon	55%	4.1%
Texas	80%	7.1%

The Centers for Disease Control and Prevention Task Force on Community Preventative Services concluded that transfer policies are “counterproductive for the purpose of reducing violence and enhancing public safety.” Of the studies the CDC analyzed, the median effect of increased violent or general crime for transferred youth was 34 percent more than similar youth who were retained in the juvenile system.<sup>28</sup> In fact, research demonstrates that youth adjudicated for an offense, even an act of violence, who are served in the community are significantly less likely to re-offend than if they were incarcerated.<sup>29</sup> Our adult criminal justice system is already plagued by high recidivism rates. The latest data indicate a 68 percent re-arrest rate after three years, and 83 percent after nine years.<sup>30</sup> Without appropriate programming and services, youth in the adult court have even less success.

High rates of recidivism and a system-wide failure to protect public safety is why a focus on community supervision is supported by portions of the crime victim community. Research conducted by JPI and the National Center for Victims of Crime found that victims frequently prefer a youth be held accountable and served through a community-based alternative.<sup>31</sup> It allows the individual to address the harm caused and work to repair the damage, while reducing future criminality and future victimization through engagement with treatment and services. These findings are consistent with public opinion research conducted by the Alliance for Safety and Justice.<sup>32</sup>

The research also recognized that many young people who engage in a violent act are overwhelmingly victims of crime themselves. Establishing community-based treatment and services is central to disrupting the cycle of crime and violence and begin the healing process.<sup>33</sup>

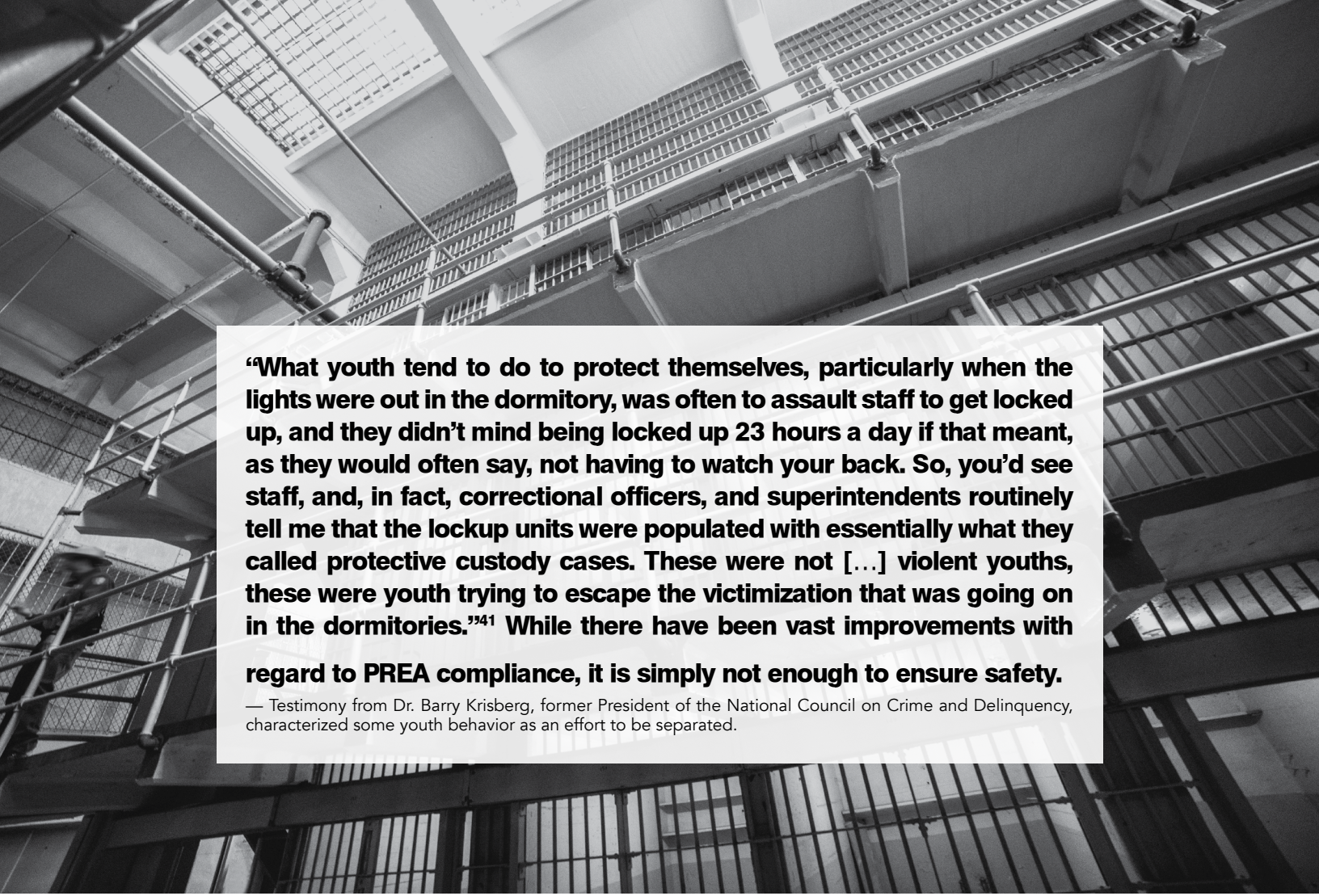
**“Our adult criminal justice system is already plagued by high recidivism rates. The latest data indicate a 68% re-arrest rate after three years, and 83% after nine years.”**

Ultimately it is about protecting public safety and preventing future victims, and the research shows that community-based interventions do this far more effectively than transfer into the adult system. For example, youth prosecuted in Wisconsin’s adult criminal justice system were re-incarcerated at a higher rate than adults in the criminal justice system or youth retained in the juvenile justice system. Within three years, re-offense rates were more than two times that of adults.<sup>34</sup> Looking at 15 states across the country, 82 percent of youth released from the adult system were re-arrested, 16 percent higher than their adult counterparts within a three year period.<sup>35</sup>

Historical data trends suggest that when youth are re-arrested after serving adult time, it is typically the result of a serious, violent offense.<sup>36</sup> A study of 400 automatically-waived youth in New York and those retained in the juvenile system in New Jersey found that New York’s youth were 39 percent more likely to be re-arrested for a violent offense.

The results are further worsened for youth transferred for a violent offense. Nearly 80 percent of 600 youth in Pennsylvania who were transferred for robbery, aggravated assault, or both, had a greater likelihood of a violent felony arrest after release compared to those with similar offenses who were kept in the juvenile justice system.<sup>37</sup>

In 2018, a 36-month recidivism analysis in Oregon found that 22 percent of youth who completed their sentence in the youth justice system recidivated, compared to 38 percent of those who served their time in the Department of Corrections.<sup>38</sup> This helped move Oregon’s legislature to end statutory exclusion in 2019.



**“What youth tend to do to protect themselves, particularly when the lights were out in the dormitory, was often to assault staff to get locked up, and they didn’t mind being locked up 23 hours a day if that meant, as they would often say, not having to watch your back. So, you’d see staff, and, in fact, correctional officers, and superintendents routinely tell me that the lockup units were populated with essentially what they called protective custody cases. These were not [...] violent youths, these were youth trying to escape the victimization that was going on in the dormitories.”<sup>41</sup> While there have been vast improvements with**

**regard to PREA compliance, it is simply not enough to ensure safety.**

— Testimony from Dr. Barry Krisberg, former President of the National Council on Crime and Delinquency, characterized some youth behavior as an effort to be separated.

## Facility Outcomes

Subjecting young people to incarceration frequently results in victimization and trauma that lead to lifelong consequences.<sup>39</sup> A 2011 report shows that 66 percent of 16 and 17 year olds who reported being sexually victimized while incarcerated, were victimized more than once.<sup>40</sup>

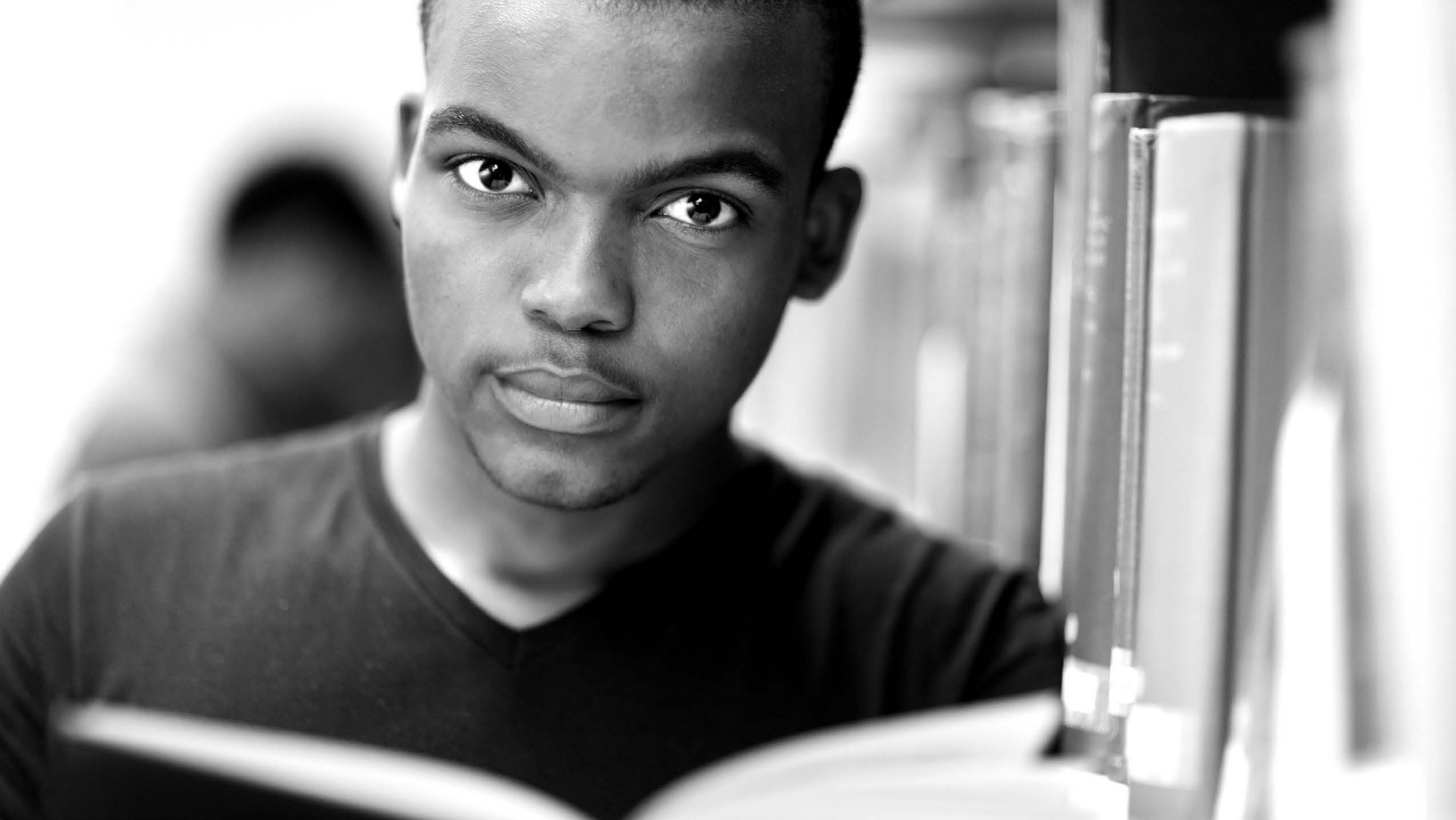
Despite the passage of the Prison Rape Elimination Act (PREA) in 2003, those under 18 incarcerated in adult facilities are still at an elevated risk for sexual and physical assault. As a result of facility officials being ill-equipped to protect youth in adult facilities, they will often take matters into their own hands in an effort to escape the brutality.

Adult prison facilities were designed without the perspective of a youth’s individualized needs. In many cases, a facility does not allow for ‘sight and sound separation’ from the adult population, which can impact access to adequate programming. Despite the progress of PREA compliance, youth are still extremely vulnerable to physical assaults and rely on separation as a solution.<sup>42</sup>

The combination of being separated and potentially isolated

plays a role in the increased risk of suicide. While available data are limited, the Bureau of Justice Statistics reports that incarcerated people 17 and under in jails had one of the highest rates of suicide of any population, 49 per 100,000 from 2000 to 2014.<sup>43</sup> Moreover, youth in jails are 19 times more likely to commit suicide than those not incarcerated.<sup>44</sup> Even short stays in an adult jail put youth at a high risk for suicide. Forty-eight percent of suicides within an adult jail occur during the first week, with nearly a quarter occurring in the first two days of incarceration.<sup>45</sup>

Adult facilities are no place for children. With conditions that are often unconscionable for adults, jails and prisons are even more dangerous for young people. An extremely high risk for sexual and physical assault, increased likelihood of suicide, and staff’s inability to ensure a youth’s safety contribute to adult facilities being an unacceptable place for any child. These placements have life-long consequences. Recognizing these facts, in 2018, the US Congress updated the cornerstone federal law that exists to protect children in custody, the Juvenile Justice & Delinquency Prevention Act. The new legislation calls for ALL youth (even those charged as adults) to be removed from adult jails by 2021.<sup>46</sup>



### **Life Outcomes**

The Positive Youth Justice (PYJ) framework is part of a transformation in the juvenile justice system that focuses on non-justice related outcomes as a measure of success. The concept centers on an individual's assets for personal growth away from anti-social behavior toward becoming a valued community member. It focuses on six domains: *work, relationships, health, education, community, and creativity.*

The number of youth in adult jails and prisons remains a small fraction of the total population, thus funding developmentally-appropriate programs for youth has historically been a low priority. According to a Bureau of Justice Statistics report in 2003, 40 percent of jails offered no educational services or programming and less than 7 percent offered some vocational training.<sup>47</sup> More recently, the Southern Poverty Law Center released a report about Florida, a state which prosecutes more children in the adult criminal justice system than any other.<sup>48</sup> They concluded that Florida's jails are failing to meet their legal obligations to provide educational services to youth. Issues included shortened school services that do not meet the required time minimums, inability to accommodate those with disabilities, and youth receiving no credit for their work that had been successfully completed while being held in jail.<sup>49</sup>

Access to adequate educational services is imperative to the future success of anyone, especially those with a history of involvement in the justice system.<sup>50</sup> Those charged with violent offenses in adult court are usually placed in older and

larger facilities with higher security protocols. Staff working in these types of facilities often struggle to provide the sophisticated programming needed for youth development both because of lack of appropriate training and physical plant constraints.<sup>51</sup>

When youth eventually return to their communities, the consequences of prosecution and incarceration in the adult system continue. Because adult criminal records are not automatically expunged and are not confidential, as they typically are in the juvenile court, the effects of waiving or transferring young people into adult court can follow youth for the rest of their lives. According to the National Juvenile Defender Center, collateral consequences for youth can include disqualification from accessing public benefits and housing, inability to serve in the military, limited employment opportunities, and an increased social stigma.<sup>52</sup> Additionally, individuals may have trouble securing government loans to pursue higher education and will be required to disclose convictions on most school applications.<sup>53</sup>

Existing research suggests that justice involvement during the adolescent development years is associated with overall worsened health, including stress-related illnesses such as hypertension or obesity during adulthood. Such ailments potentially decrease an individual's life expectancy.<sup>54</sup>

When certified as an adult, youth are less likely to receive programming rooted in PYJ, and are offered programming not suited for their developing needs. This significantly reduces the likelihood of successful reentry.

Black youth represented approximately

**54%**

of all youth who were judicially waived to adult court and...

**58%**

of youth transferred to adult court for persons offenses

Meanwhile, White youth accounted for

**31%**

and...

**26%**

respectively

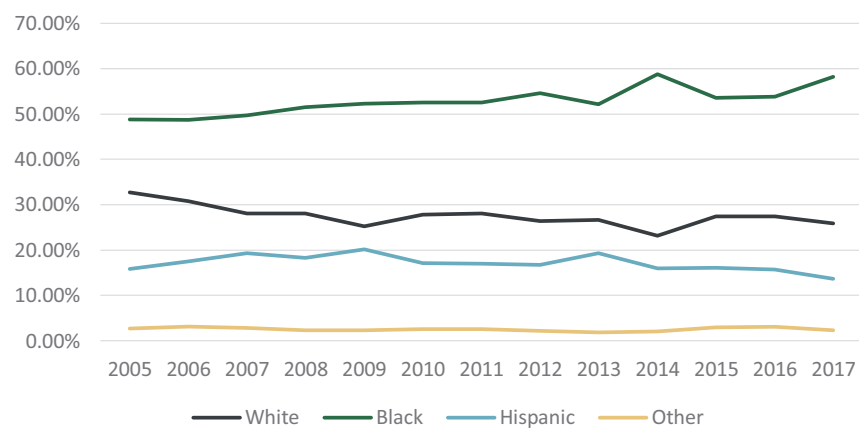
## Racial Disparities Outcomes

Black youth are more likely to be admitted to prison for violent offenses.<sup>55</sup> According to a 2017 American Communities Survey, Black individuals under the age of 18 comprised 14 percent of all youth, while White youth accounted for approximately 68 percent.<sup>56</sup> Despite this, Black youth represented approximately 54

percent of all youth who were judicially waived to adult court and 58 percent of youth transferred to adult court for persons offenses according to national data in 2017; the biggest gap in disparities in forty years.<sup>57</sup> Meanwhile, White youth accounted for 31 percent and 26 percent respectively.<sup>58</sup> Thus, Black youth are disproportionately affected by waivers and transfers to adult court, particularly when it is for a violent offense.

The percentage of Black youth waived to adult court for violent

Table G: Percent of Youth Waived to Adult Court by Race



offenses was the only group to increase in judicial transfers to adult court between 2016 and 2017. (Table G)

In short, the practice of transferring youth has decreased dramatically since the mid-2000s. Despite these improvements in policy and practice over the last two decades, there has been an increase in the percentage of youth waived for violence, disproportionately among youth from

communities of color. This disparity occurs despite research showing that all young people have similar rates of risk-taking behavior. As part of a self-report study by the Centers for Disease Control and Prevention, Black (9.6 percent) and Latino (6.5 percent) youth males, carried a firearm at similar rate to white youth (9.6 percent). The transfer disparity is not an indication of increased offending by black youth, but issues within the transfer mechanism.<sup>59</sup>





# Recommendations

## ***Eliminate transfer mechanisms for all youth, regardless of the committing offense.***

The criminal justice system was designed for adults – not for youth under any circumstances. The adult system lacks educational services and other age-appropriate programs that support youth mental and physical development, which in turn impacts the likelihood of successful reentry. Eliminating adult court transfers and shifting supervision toward age-appropriate, rehabilitative-focused interventions in the juvenile system will increase public safety. Deep-end youth facilities are already handling some serious cases, such as robbery, assault, and homicide. While not perfect, these settings are far more appropriate and more effective than the adult system.

Adolescent development research shows that youth continue to develop cognitively into their mid-20s, with youth-like characteristics of heightened impulsivity, greater risk-taking, and impaired judgement remaining prominent until that age. To better align with these findings, some states have eliminated some automatic exclusions from the juvenile justice system. Some states, like Connecticut, Colorado, Illinois, and Massachusetts, are now exploring the possibility of expanding such exclusion efforts to emerging adults above the age of 18. Vermont has already made such strides, increasing its jurisdictional age to 20 beginning in 2022.

While there have been reform efforts around automatic exclusion, other transfer tools remain readily available and largely unchallenged. It is important to note that children sentenced to

adult court receive an adult criminal record. These offenses are not automatically concealed and often play a barrier in securing adequate employment, education, military service, and student financial aid.

To improve safety outcomes for everyone, no crime committed by a child should result in adult court transfers. Rather, the juvenile justice system should serve all youth during their developmental years, ideally into their mid-twenties.

## ***Use community-based programming as a first choice, and any type of age appropriate confinement as a last resort.***

When adequately supported and facilitated, community-based programming garners better outcomes than confinement for everyone: justice-involved youth, community members, and victims. The research clearly shows that the same youth disproportionately subjected to transfers for violent offenses can be more appropriately managed in the community. These programs are shaped by local stakeholders with direct parallels to the community's values and culture, with the goal of reducing future justice involvement. These alternatives have been successful with those charged with serious violent offenses, ranging in ages from 16 to 24 years old.<sup>60</sup> The growth in these community-based options is partially a result of support from law enforcement, prosecutors, and the victim's community.<sup>61</sup>

Incarceration in adult prisons leads to higher recidivism rates than those served by the juvenile justice system. The Pathways

to Desistance study found that an individual's persistence into future criminal activity is not based on the presenting offense, but about the specific risks posed by an individual. Adult courts are ill-suited to account for a child's risks and needs, or to develop an age-appropriate rehabilitation plan. Conversely, youth-focused community alternatives are rooted in the principles of Positive Youth Justice (PYJ) and contribute to lower youth crime and recidivism rates. PYJ focuses on personal accountability and builds on young people's strengths. It seeks to address the root issues that led a youth to be involved in the justice system in the first place by lifting barriers and connecting them to necessary resources. Other restorative justice programs across the nation have also resulted in reduced recidivism rates and safer neighborhoods.

Moreover, many victims of crime do not prefer confinement. The Justice Policy Institute and the National Center for Victims of Crime solicited input from crime survivors and crime victims' advocates. The discussion was focused on how to serve youth effectively who have committed crimes of violence. Key takeaways from the conversation included that accountability does not equal confinement, and any community treatment needs to be effective at reducing future criminality and victimization.<sup>62</sup> Similar findings have been supported by other national surveys.<sup>63</sup> For all children, regardless of the offense, many crime survivors prefer programming that meets the needs of the individual, strengthens families, and addresses the underlying causes of crime. These restorative, community-based programs engender accountability and aid in avoiding future victimization.

***Increase investments in approaches that address the needs of individual and community-level victimization and increase prevention and intervention by establishing public health partnerships to reduce violence.***

Despite the success of a community-based, treatment-focused model, most resources are still dedicated to confinement and there is significant underinvestment in the approaches that most effectively reduce youth violence and address the harms of crime. According to the National Crime Victimization Survey, those most likely to experience crime are often least likely to access services. For example, only 12 percent of victims of serious violent crime receive support.<sup>64</sup>

There is a connection between those least likely to receive victimization services and those currently incarcerated. Take Florida's system, for example. Tracking Adverse Childhood Experiences (ACEs) is one way to determine an individual's past trauma and victimization. Untreated ACEs can lead to negative consequences, including increased risk of future criminal justice involvement. An analysis of Florida's juvenile justice system illustrates the entanglement of victimization and justice-involved youth; 98 percent of Florida's confined population had reported four or more ACEs, and the remaining two percent reported at least one ACEs.<sup>65</sup> Trauma recovery centers are an effective, yet underfunded, tool to address these harms of

crime and victimization. They aim to assist people suffering from trauma, violence, and loss by providing mental health and medical services. Trauma recovery centers also seek to address barriers that victims of violent crime face, such as working with law enforcement and receiving adequate support to address their needs.

Funds should also be reallocated from incarceration to support proven public health prevention strategies. These programs target communities of color, where crime and incarceration occur at higher rates. This new, concentrated focus on violent crime would decrease the number of children transferred to the adult court and shift wasted prison resources to help scale community-level programs that serve more neighborhoods plagued by violence.

***Use risk and needs assessment tools in decision-making around placement and length of stay.***

Youth are typically incarcerated or waived into adult court based solely on the nature of the underlying offense rather than an assessment of both their needs and risk of future harm to the community. A risk and needs assessment can provide decision makers vital information to tailor a community-based response that addresses the cause of the behavior while also avoiding the imposition of often harmful confinement on a youth.<sup>66</sup> If this practice was standardized, we could see a significant decrease in transfers for all types of offenses.

Some of these tools are beginning to measure previous exposure to traumatic events. This level of understanding would help connect individuals to appropriate treatment services and expand trauma-informed care practices.

These tools are not a panacea. They do not replace the need for a trained justice professional to make an individualized judgement. They also must be carefully validated and reviewed to ensure that they accurately assess risk and do not exacerbate existing racial or ethnic biases present in other parts of the system. Nonetheless, risk and needs assessment tools can better inform decision makers about the most appropriate setting and interventions for youth who have engaged in violence.

***Increase age-appropriate resources for youth who are subjected to secure confinement.***

The ultimate goal should be to eliminate any mechanism that leads to youth entering the adult criminal justice system. However, as long as transfers occur, adult facilities need to invest in children's futures by expanding education, recreation, mental health, and workforce opportunities. The absence of such programs prohibits crucial emotional and physical growth and increases the risk of recidivism. They may also violate federal IDEA (Individuals with Disabilities Education Act) law for youth who had identified disabilities prior to their arrest. All children in the adult system, regardless of security level or committing offense, need age-appropriate resources to help them develop.



# Conclusion

The juvenile justice system has undergone dramatic changes over the last two decades. The era of “super predators” and punitive policies and practices that increasingly treated children like adults has been supplanted by falling crime rates and a focus on diversion and community-based interventions that are more effective at addressing underlying needs of youth while also protecting public safety.

Unfortunately, the news is not all positive. One vestige of that prior era remains with regard to youth who engage in violent behavior. Too many states still rely on confinement and transfer to the adult system. While all youth are at risk of being transferred or excluded from the juvenile court, depending on jurisdictional law, there is an evolving focus on youth who commit acts of violence. This is despite the fact that the research clearly shows youth are better served in the community regardless of the underlying conduct.

The harms of confinement and transfer of children into the adult system actually drive higher rates of recidivism. Moreover, it exacerbates racial disparity as youth of color are more likely to be transferred into the adult system for violent behavior.

It is time that policy makers follow the research and substantially reduce the number of youth placed in secure confinement or the adult system for acts of violence. States should be employing evidence-based and validated risk and needs instruments to identify appropriate interventions that address the cause of the behavior in the least restrictive setting that is safe. This approach is supported by many victims of crime who recognize that simply incarcerating youth or transferring youth to the adult system fails to protect public safety and can contribute to future victimization.

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