



# To Punish a Few:

**Too Many Youth Caught in the Net of Adult Prosecution**

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By Jolanta Juskiewicz, Ph.D.



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By Jolanta Juskiewicz, Ph.D.

*“Review of the evidence on effect of transfer laws on subsequent violence among those transferred to adult criminal justice systems indicates that transfer of juveniles to the adult criminal system generally results in increased rather than decreased subsequent violence, compared with violence among juveniles retained in the juvenile system. In addition, the evidence whether transfer laws deter juveniles in the general population from violent crimes is inconclusive. Overall, available evidence indicates that use of transfer laws and strengthened transfer policies is counterproductive for the purpose of reducing juvenile violence and enhancing public policy.” (American Journal of Preventive Medicine, April 2007.)*

*“A civilized society must not easily give up hope of rehabilitating a child who commits a crime...It is more than social development; recent medical research has found that the brain continues to develop into one’s teenage years. In no instance does a juvenile belong in adult prisons... Reasserting the role of the juvenile criminal system, traditionally charged with acting in the best interests of a minor, does not mean society’s interest in public safety is shortchanged. Juvenile courts have rarely hesitated to transfer minors to adult court where necessary, such as when a 17-year old with a history of violent behavior commits a heinous premeditated crime.” (New York Times, May 23, 2001.)*

*“In essence, the juvenile court operates under the presumption that offenders are immature, in three senses of the word: their development is incomplete, their judgment is less than mature, and their character is still developing. The adult court, in contrast presumes that defendants are mature: competent, responsible, and unlikely to change. Which of these presumptions best characterizes individuals between the ages of 12 and 17?...I think the available evidence leads the identification of three, not two, categories of individuals: juveniles, who should be categorically non-transferable to criminal court; adults, who should automatically be charged in adult court; and youths, whose transferability to criminal court should be determined not on the basis of the alleged offense, but through competence testing, clinical interviews and so forth.” (Congressional Research Briefing, “Juvenile Crime: Cause and Consequences,” January 19, 2000.)*

## I. INTRODUCTION

Prosecuting juveniles as adults has become a mainstay approach to dealing with many youth across the United States<sup>1</sup> as increasingly greater numbers of youth are being caught up in the adult criminal justice net. Increasing also is the questioning of the rationale and the results of this changing landscape from the traditional view of children warranting a separate system of justice to the contemporary view of youth deserving adult punishment. The intended purpose of the extant policy is to identify among youth the worst of the worst, those termed “predators,” and not suitable for the juvenile justice system and to punish them as adults. In passing legislation in the 1990s making it easier to prosecute youth as adults, legislators were reacting to a perceived growth in violent crimes attributable to youth,<sup>2</sup> a few highly publicized violent incidents, such as the rape and assault of the Central Park jogger, increased gang activity in many urban areas, and in some cases, disenchantment with the effectiveness of the juvenile justice system in dealing with very

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<sup>1</sup> With the exception of Nebraska, the other 49 states and the District of Columbia enacted or expanded the provisions for filing in criminal courts cases involving juveniles. Office for Juvenile Justice and Delinquency Prevention, *National Report Series Bulletin: Juveniles in Court*, June 2003, p. 2.

<sup>2</sup> While the youth crime rose in the late 1970s and into the 1980s, in the 1990s the crime rates were declining.

violent youth. By 1997 an estimated 200,000 youth in the United States were tried as adults each year,<sup>3</sup> with the number of youth incarcerated in adult prisons reaching 7,400, representing double the number as in 1985.<sup>4</sup>

The traditional view dates back over 100 years since the movement toward the creation of the first juvenile court in Chicago in 1899. The creation of a juvenile justice system, which was specifically “tailored to recognize the mitigating factors associated with juvenile crime is recognized as one of the most progressive developments in the evolution of criminal justice in the United States.”<sup>5</sup> Juveniles who broke the law were brought before the juvenile court. The underpinning of the juvenile justice system was “that children are developmentally different from adults and thus are more amenable to treatment and rehabilitation. The juvenile justice process centers on the individual child and takes into account the child’s problems and needs, focusing less on punishment than helping the child change and so minimize the likelihood of future criminal behavior.”<sup>6</sup>

Only in rare cases, judges decided for which youth juvenile court could not provide appropriate treatment because they were so violent or were such chronic offenders. This boundary between juvenile and adult courts was to be crossed “only in extreme cases of dangerousness or recalcitrance, and only when the age of the offender approached the upper bound of the juvenile court’s jurisdiction.”<sup>7</sup> In such cases the jurisdiction of the juvenile court was “waived” and the youth were transferred to adult criminal court.<sup>8</sup>

In the current environment, rather than being the paramount method of transferring cases of youth from juvenile to adult court, judicial waivers have been supplanted by filing mechanisms that obviate the juvenile court altogether. The premise for dealing with children differently has been undermined and replaced by a punitive model. Most states have legislation that automatically exclude youth charged with certain offenses, notably but not necessarily, serious violent crimes,<sup>9</sup> from juvenile court jurisdiction or bestow discretion to prosecutors to decide in which court to file such cases.<sup>10</sup>

As a result of the widening net of the adult criminal justice system numerous issues emerged worthy of special attention: including the consequences of transfer for public safety, the costs of prosecuting youth as adults, the lengthy prison sentences faces by juveniles convicted as adults in states with strike laws, the developmental differences between children and teenagers and adults, the disproportionate representation of youth of color in both the adult and juvenile justice systems, and the incarceration of youth in adult detention facilities.

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<sup>3</sup> It should be noted that most of the 200,000 cases of juveniles in adult courts were the result, not of decisions made by judges or prosecutors with respect to individual cases involving juveniles, but because of the upper bound of jurisdiction of juvenile courts having been defined as 16 or 17 in many states.

<sup>4</sup> Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report, 1999*, p. 106; Kevin J. Strom, “Profile of State Prisoners Under 18, 1985-97,” *Bureau of Justice Statistics Special Report* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics), February 2000.

<sup>5</sup> James Austin et al., *Juveniles in Adult Prisons and Jails: A National Assessment* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance), October 2000, p. ix.

<sup>6</sup> Malcolm C. Young and Jenni Gainsborough, *Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences* (Washington, D.C.: The Sentencing Project), January 2003, p. 2.

<sup>7</sup> Laurence Steinberg, “Should Juvenile Offenders Be Tried As Adults? A Developmental Perspective on Changing Legal Policies,” paper presented as part of a Congressional Research Briefing titled *Juvenile Crime: Causes and Consequences*, January 2000, p. 1.

<sup>8</sup> In the early years of the juvenile justice system, when its legitimacy had not been deeply rooted, it has been noted that many youth were moved to the adult system without a formal hearing in the juvenile court. See David Tenenhaus, *Juvenile Justice in the Making*, 2004.

<sup>9</sup> At the end of the 1999, 28 states and the District of Columbia had statutory exclusion laws. Office for Juvenile Justice and Delinquency Prevention, *National Report Series Bulletin: Juveniles in Court*, June 2003, pp. 1-2.

<sup>10</sup> Fifteen states and the District of Columbia have laws giving prosecutors discretion to file cases involving juveniles in either the juvenile court or in criminal court. These provisions are known as prosecutorial waiver, prosecutor discretion or direct file.

## Impact on public safety of prosecuting youth as adults

The Task Force on Community Preventive Services, which was supported by the U.S. Department of Health and Human Services (DHHS) in collaboration with the Centers for Disease Control and Preventive (CDC), the National Institutes of Health and the National Institute of Justice undertook a systematic review of published scientific evidence on the effectiveness of laws and policies related to the prosecution of juveniles in the adult criminal justice. The Task Force found that teens who are transferred to the adult criminal justice system are 34 percent more likely to be arrested again and concluded that “strengthened transfer policies are harmful for juveniles who experience transfer. Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence.”<sup>11</sup> Prosecuting juveniles in adult criminal court tends to increase risks for the young offenders, yet it fails to significantly increase public safety.”<sup>12</sup> These violent outcomes include an increase in pretrial violence, victimization of juveniles in adult facilities, and elevated rates for juveniles incarcerated in adult facilities.”<sup>13</sup>

- A study of 2,000 New York and New Jersey youth, where in the former youth as young as 13 were prosecuted as adults and in the latter where nearly all of the juveniles were processed in juvenile court, found that New York youth “were 85% more likely to be re-arrested for violent crimes than those prosecuted in the New Jersey juvenile courts, and 44% more likely to be re-arrested for felony property crimes.”<sup>14</sup>
- A study in Florida of 2,738 matched group youthful offenders found that those processed by the adult system were more likely than those coming out of the juvenile system to recidivate as measured by new crimes and more serious crimes.<sup>15</sup> A long-term recidivism study in Florida also found that transferred youth were rearrested more quickly and were rearrested at higher rates than their counterparts who remained in juvenile court.<sup>16</sup>
- Pennsylvania youth transferred to adult court were found, in another study of about 500 juveniles, to have higher recidivism rates (23%) than youth who were processed in juvenile court (13%).<sup>17</sup>
- A study in Hennepin County, Minnesota of all cases adjudicated between 1986 and 1992 in which prosecutors filed a motion to transfer juveniles to adult criminal court found that transferred cases were associated with a 26% increased likelihood of recidivating.<sup>18</sup>

On the other hand, there have been evaluations of programs used by the juvenile justice system that show positive results in reducing recidivism. For example, “programs such as Multi-systemic therapy and Multidimensional Treatment Foster Care have been shown to substantially reduce arrest rates and drug use among serious and chronic juvenile

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<sup>11</sup> Angela McGowan et al., “Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review,” *American Journal of Preventive Medicine*, April 2007, p. S15.

<sup>12</sup> Dr. Robert L. Johnson, interim dean of the University of Medicine and Dentistry of New Jersey and leader of the Task Force on Youth and the Criminal Justice System, University News Service, *News Release*, April 25, 2007.

<sup>13</sup> Ibid.

<sup>14</sup> Jeffrey Fagan, “The Comparative Advantage of Juvenile vs. Criminal court Sanctions on Recidivism Among Adolescent Felony Offenders,” *Law and Policy*, Vol. 18., Nos. 1& 2, January/April, 1996 and cited in National Center for Juvenile Justice, “The Changing Border of Juvenile Justice: Transfer of Adolescents to the Adult Court,” *Issue Brief* 5.

<sup>15</sup> Donna Bishop, Charles Frazier, Lon Lanza-Kaduce and Lawrence Winner, “The Transfer of Juveniles to Criminal court: Does It Make a Difference?” *Crime and Delinquency*, Vol. 42, No. 2, April 1996.

<sup>16</sup> Lawrence Winner, Lon Lanza-Kaduce, Donna Bishop, and Charles Frazier, “the Transfer of Juveniles to Criminal court: Reexamining Recidivism Over the Long Term,” *Crime and Delinquency*, Vol. 43, No. 4, 1997.

<sup>17</sup> David Myers, “The Recidivism of Violent Youths in Juvenile and Adult Court,” 2003.

<sup>18</sup> Marcy Podkopacz and Barry C. Feld, “Judicial waiver policy and practice: persistence, seriousness, and race,” *Law Unequal* 1995.

offenders who are dealt with by juvenile courts – and they complete the programs by comparison with control groups of similar non-participant cost far less to implement than they save in reduced criminal justice expenditures.”<sup>19</sup>

### Costs of an adult record

A report released in 2007, *Perpetual Punishment: The Consequences of Adult Convictions for Youth*,<sup>20</sup> recites a number of legal barriers, state and federal, for persons with criminal records that have an impact on their way of life.

- Criminal convictions restrict the right to vote in all but two states (Maine and Vermont).
- In most states persons convicted of drug offenses are ineligible for public assistance and food stamps.
- Even an arrest may deny eligibility for public housing.
- Many states allow employers not to hire persons with a criminal record.
- Prison-based education programs, which have been shown to reduce recidivism, were reduced when Pell Grant eligibility for incarcerated persons were eliminated.

### Developmentally, youth are not young adults

Organizations as diverse as the U. S. Department of Justice, the Centers for Disease Control and Prevention, Amnesty International, and the American Bar Association (ABA)<sup>21</sup> have expressed concern about this development. In a foreword to a U.S. Department of Justice publication, the Director of the Bureau of Justice Assistance wrote “[t]his phenomenon is challenging the belief, enshrined in our justice system a century ago, that children and young adolescents should be adjudicated and confined in a separate system focused on their rehabilitation.”<sup>22</sup> An ABA Task force set forth seven general principles, the first one recognizing that “youth are developmentally different from adults, and these development differences need to be taken into account at all states and in all aspects of the adult criminal justice system.”<sup>23</sup>

- In a critique of legislation that expands transference of juveniles to adult criminal court, the authors observe that “the assumption that minors are developmentally inclined to use immature judgment is often explicitly invoked when courts endorse restrictive policies on such issues as adolescent abortion and psychiatric hospitalization; it is discounted when policymakers are urged to expand adolescents’ rights to get tough on juvenile crime.”<sup>24</sup>
- In a similar vein, another researcher noted that “I find it ironic that the same Virginia legislative session that lowered the age of transfer to 14 also passed a law that prohibited youth under the age of 18 from getting a tattoo without their parents’ permission because they were too immature to make this decision on their own!”<sup>25</sup>

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<sup>19</sup> Lawrence W. Sherman, et al., *Preventing Crime: What Works, What Doesn't, What's Promising* (Washington, D.C.: National Institute of Justice), 1997.

<sup>20</sup> Alexa Eggleston, *Perpetual Punishment: The Consequences of Adult Convictions for Youth* (Washington, D.C.: Campaign for Youth Justice), which cited as a primary source, Legal Action Center, *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Records*, [Http://www.lac.org/lac/index.php](http://www.lac.org/lac/index.php).

<sup>21</sup> Robert E. Shepherd, Jr., “In 1997 the ABA Criminal Justice Section Standards and Juvenile Justice Committees jointly authorized the creation of a Task Force to address the overall implications of the increasing number of juveniles being transferred to the adult criminal justice system for trial and incarceration there. Youth in the Criminal Justice System: An ABA Task Force Report, February 2002, p. 1.

<sup>22</sup> James Austin, et al., *Juveniles in Adult Prisons and Jails: A National Assessment* (Washington, D.C.: Bureau of Justice Assistance), October 2000.

<sup>23</sup> Ibid, p.2.

<sup>24</sup> E. Scott et al., “Evaluating Adolescent Decision Making in Legal Contexts,” *Law and Human Behavior*, volume 19, 1995 cited in D. Johnson, op. cit., 16.

<sup>25</sup> N. Reppucci, “Adolescent Development and Juvenile Justice,” *American Journal of Community Psychology*, Volume 27, 1999.



The same author offered that “differences do exist between adolescents and adults and they do not disappear because an adolescent commits a crime.”<sup>26</sup>

### Youth of color constitute majority of cases prosecuted in adult court

Numerous reports have shown that youth of color are over-represented in the populations held in detention facilities and transferred from juvenile to adult court. In the *Building Blocks for Youth* report, “*And Justice For Some: Differential Treatment of Youth of color in the Justice System*,” the research demonstrates that youth of color experience a “cumulative disadvantage” as they move from arrest to referral on charges, to adjudication, to disposition or sentencing, and finally to incarceration.

Disproportionate representation is not the same thing as racial bias. Some argue that over-representation of youth of color in the justice system is simply a result of youth of color committing more crimes than White youth. Even when that is the case, a fair analysis, however, requires consideration of police practices such as targeting patrols in low-income neighborhoods, locations of offenses (on the street or in homes), differences in delinquent behavior by minority and White youth, differential reactions of crime victims to offenses committed by White or youth of color, and racial bias by decision-makers in the system. Institutional racism rather than individual racism seems to be a critical factor.<sup>27</sup> As noted in *And Justice for Some*, a meta-analysis of studies on race and the juvenile justice system, two-thirds of the studies of disproportionate minority confinement showed negative “race effects” at one stage or another of the juvenile justice process.

### Youth detained in adult jails

It has been well documented that youth held in adult jails are more vulnerable to suffering harm and even death than if they were placed in juvenile facilities.<sup>28</sup> Youth “are more likely to be beaten by staff, to be attacked with a weapon, and to commit suicide than are those in juvenile facilities.”<sup>29</sup> The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) was intended to address the manner in which states and communities handled juveniles by focusing on the prevention of delinquency and improving the juvenile justice system in controlling delinquency. One of the goals of JJDP Act of 1974 was to protect juveniles from exposure to adult inmates. It recognized that juveniles should not be held in the same detention facilities as adults, but under no circumstances were they to be held within sight and sound of adults if no other housing arrangements were available. The 2002 reauthorization of the JJDP Act identified four core areas, reiterating those of the original Act.<sup>30</sup> These were the removal of juveniles from adult jails and lockups and if that were not possible, separation of juveniles from adults in institutions. A third core issue was reduction of disproportionate minority contact (DMC), where it exists.<sup>31</sup>

### Public opposed to wholesale prosecution of youth as adults

A recent poll conducted of United States voters’ attitudes toward youth crime and the justice system found that “by more than a 15 to 1 margin (92% to 6%), the US voting public believed that decisions to transfer youth to adult court

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<sup>26</sup> Ibid., p. 315.

<sup>27</sup> See Darrell F. Hawkins and Kimberly Kempf-Leonard, eds. *Our Children, Their Children: Confronting Racial and Ethnic Differences in American Juvenile Justice*. (Chicago, Illinois: University of Chicago Press, 2005).

<sup>28</sup> C. Hartney, “Youth Under Age 18 in the Adult Criminal Justice System,” *National Council and Delinquency Fact Sheet*, May 2006 in Melissa Coretz Goemann et al., “Children Being Tried As Adults: Pre-Trial Detention Laws in the U.S.,” *Policy Brief Adulthood Series*, Volume 3, 2006.

<sup>29</sup> Melissa Coretz Goemann et al., “Children Being Tried As Adults: Pre-Trial Detention Laws in the U.S.,” *Policy Brief Adulthood Series*, Volume 3, 2006, p. 1.

<sup>30</sup> These were also the core issues in the founding of a separate justice system for juveniles.

<sup>31</sup> The fourth core area was deinstitutionalization of status offenders (DSO), namely behaviors such as running away, that would not constitute a crime if committed by an adult.

should be made on a case-by-case basis and not be governed by a blanket policy.”<sup>32</sup> These views echo those of researchers on the psychological factors related to maturity and culpability as it relates to juveniles. According to the mitigation model of juvenile justice, for example, punishment should not only be meted out on the basis of the harm caused but the blameworthiness of the individual causing the harm. Under this model, youth, while not excused for their actions, should have these actions mitigated by virtue of their not being as responsible or blameworthy because they are not as developed or competent as adults. In an article that reviews research in this area, the authors cite research that contends “the age boundary is justified because it can be presumed that immaturity as a mitigating condition can be applied with confidence to most adolescents”<sup>33</sup> hence the rationality for the juvenile justice system. That does not mean that all youth lack maturity and competence, but identifying these should be accomplished accurately and carefully. “Only after a full and impartial consideration of the juvenile’s individual circumstances and best interests,” should a juvenile be transferred to adult court, if found not amenable to rehabilitation.<sup>34</sup>

## II. METHODOLOGY

In many ways this study follows in the footsteps of an earlier study, which was the first of its kind, to take an in-depth look at the prosecution of youth of color in criminal courts. The earlier study, whose findings were published in a report titled *Youth Crime/Adult Time: Is Justice Served*, was distinctive in several respects. First, it included an analysis of the full range of “transfer” mechanisms, those resulting from judicial decisions, prosecutorial decisions, and legislative decisions. Second, it examined all the major decision points in criminal case processing, from arrest to final disposition. Third, there were a sufficient number of Latino youth in the study to allow separate analysis. Fourth, it was a multi-jurisdictional study of juvenile cases prosecuted in adult courts, involving 18 large urban counties across the country. Finally, the findings were based on data gathered specifically for this study and not from secondary sources.<sup>35</sup>

This report uses data collected for the Juvenile Defendants in Criminal Courts, Survey of 40 Counties, 1998 (JDCC) program sponsored by the Bureau of Justice Statistics, U.S. Department of Justice.<sup>36</sup> JDCC was the most ambitious effort to capture information on the prosecution of juveniles as adults. The JDCC program in effect was built upon the data collected for the earlier study by expanding the number of sites and the number of cases studied. This report presents a multi-faceted analysis that focused on exploring the question of whether the intended purposes of the expansion of adult prosecution of youth were met in 1998 and whether the answers to that question would differ today. To the extent possible, more recent data are used to provide a contemporary perspective on the 1998 findings.

Notwithstanding the many advantages of the data used for this report, certain limitations also exist. One of the limitations is that only cases involving juveniles who were charged with felony offenses are in the database; it is unknown

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<sup>32</sup> Barry Krisberg and Susan Marchionna, “Attitudes of US Voters toward Youth Crime and the Justice System,” *Focus*. (San Francisco: National Council on Crime and Delinquency), February 2007.

<sup>33</sup> Deborah Johnson et al., “the Violent Youth Offender and Juvenile Transfer to the Adult Criminal Court,” *Journal of the Institute of Justice and International Studies*, 2004 citing L. Steinberg and E. Scott, “Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,” *American Psychologist*, Volume 58, 2003.

<sup>34</sup> S. Sabo, “Rights of Passage: An Analysis of Waiver of Juvenile Court Jurisdictions,” *Fordham Law Review*, Volume 64, 1996.

<sup>35</sup> This study does not examine the impact of prosecuting youth as adults, either from the perspective of the juvenile or his or her family or from the community perspective of deterring future criminal activity. Researchers and others who have taken a look at the consequences of treating youth as adults find that rather than reduce recidivism, adolescents who are tried as adults commit more and more serious crimes than their cohorts who remained in the juvenile justice system.

<sup>36</sup> The data under the title, “Juvenile Defendants in Criminal Court (JDCC); A Survey of 40 Counties in the United States, 1998,” are available at the Inter-University Consortium for Political and Social Research (ICPSR), Institute of Social Research, University of Michigan, – 2003-09-35. In accordance with its mission of providing and reporting data, BJS issued a report of the JDCC data in May 2003, *Juvenile Felony Defendants in Criminal Courts*, which for the most part was restricted to a descriptive analysis of the data.

how many juveniles in the 40 jurisdictions were prosecuted as adults for misdemeanor charges. Another limitation is that there are no comparison groups of similarly charged juveniles. It should be noted, however, that identifying a comparison group would have its own set of problems.<sup>37</sup>

## **A. Sample & Site Selection**

JDCC consisted of cases involving juveniles prosecuted for felony offenses in criminal courts in 40 large, urban jurisdictions (39 counties and one independent city).<sup>38</sup> All the cases that were filed for felony offenses during calendar year 1998 in the state criminal courts, regardless of filing mechanism, which involved juveniles, were selected for the study.<sup>39</sup> The 40 jurisdictions were located in 19 states, with 9 of the states having 2 or more jurisdictions in the study. The states cover the three principal filing mechanisms: judicial waiver or certification, direct filing, and mandatory exclusion laws. The states represent all the major regions of the country: west, Midwest, south, and northeast.

This study includes cases that involved a juvenile charged with at least one felony offense. All the cases that were filed between January 1 and December 31, 1998 in 40 criminal courts were tracked from the filing date to final adjudication (i.e., dismissal or sentencing) in adult court or until December 31, 1999, whichever occurred first. There are 7,135 cases in the study. They represent 100% of the total number of cases involving White, African-American, American-Indian and Alaska Native, Hawaiian and Pacific Islander, Asian, and Latino youth that were filed in the criminal court involving juveniles in the 40 jurisdictions for 1998.

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<sup>37</sup> A matched comparison would most likely be confined to cases that were transferred from the juvenile court (judicial waiver) and less so to the direct filed cases. Statutory exclusion cases could not be matched because by definition they were automatically filed in the criminal court.

<sup>38</sup> JDCC expanded the number of courts from 18 to 40 in 39 counties and Baltimore City, located in 19 states. The 40 jurisdictions selected for this study were drawn from those that participated in the 1998 State Court Processing Statistics (SCPS) project of the Bureau of Justice Statistics, U.S. Department of Justice.<sup>38</sup> Conducted biennially since 1988, SCPS tracks for one year a sample of felony cases filed during one month in 40 jurisdictions representative of the 75 most populous jurisdictions in the country.

<sup>39</sup> The number of cases was expanded from cases filed during the first six-months in 1998 to all the cases filed during the entire calendar year 1998.

**States and Jurisdictions:  
40 Large Urban Criminal Courts, 1998**

<b>Alabama</b>	–	Jefferson (Birmingham) County
<b>Arizona</b>	–	Maricopa (Phoenix) County Pima (Tucson) County
<b>California</b>	–	Alameda (Oakland) County Los Angeles County Orange (Santa Ana) County Sacramento County San Bernardino County San Francisco County Santa Clara (San Jose) County Ventura County
<b>Florida</b>	–	Broward (Fort Lauderdale) County Miami-Dade County Hillsborough (Clearwater) County Orange (Orlando) County
<b>Georgia</b>	–	Fulton (Atlanta) County
<b>Hawaii</b>	–	Honolulu County
<b>Illinois</b>	–	Cook (Chicago) County Du Page (Wheaton) County
<b>Indiana</b>	–	Marion (Indianapolis) County
<b>Kentucky</b>	–	Jefferson (Louisville) County
<b>Maryland</b>	–	Baltimore City Montgomery (Rockville) County
<b>Michigan</b>	–	Wayne (Detroit) County
<b>Missouri</b>	–	Jackson (Kansas City) County St. Louis County
<b>New York</b>	–	Bronx County Kings (Brooklyn) County New York (Manhattan) County Queens County Suffolk County Westchester County
<b>Ohio</b>	–	Hamilton (Cincinnati) County
<b>Pennsylvania</b>	–	Allegheny (Pittsburgh) County Philadelphia County
<b>Tennessee</b>	–	Shelby (Memphis) County
<b>Texas</b>	–	Dallas County Harris (Houston) County
<b>Washington</b>	–	King (Seattle) County
<b>Wisconsin</b>	–	Milwaukee County

## Definitions

There are many terms that are used in this report that warrant definition. For the purposes of this report, these terms are defined as follows:

**Lower Age of Juvenile Court Jurisdiction:** The age of a youth at which the juvenile court has no jurisdiction over the youth and the youth is automatically considered to be an adult.<sup>40</sup>

**Youth or Juvenile:** An individual who has not reached the statutorily defined upper age for original juvenile court jurisdiction in the state in which he or she is charged, be that 15, 16, or 17.<sup>41</sup>

**Transfer and Waiver Provisions:** A variety of mechanisms exist in state laws by which a youth can be transferred from a juvenile court to an adult court.

**Judicial Waiver:** Under judicial waiver laws, which comprise the traditional transfer mechanism, the case originates in juvenile court and following a process of deliberation, the juvenile court judge transfers the case to adult court. Some states call the process “certification,” or “remand,” or “bind over for criminal prosecution.”

**Prosecutorial Waiver:** Sometime this is called “direct filing,” whereby state laws grant prosecutors the discretion to file cases against youth in either juvenile or adult court. At the end of the 2006 legislative session, 15 states had concurrent jurisdiction provisions.

**Reverse Waiver:** This is a mechanism that allows youth whose cases are being prosecuted in adult court to be transferred back to the juvenile court system. As the end to the 2006 legislative session, 25 states had reverse waiver provisions.

**Statutory Exclusion:** This refers to state laws, sometimes called “legislative exclusion,” that exclude from juvenile court jurisdiction youth charged with certain offenses or with certain backgrounds, such as previous convictions for the same offenses. At the end of the 2006 legislative session, 29 states had statutory exclusion laws.

**Once an Adult, Always and Adult:** These state laws preclude youth who have previously been prosecuted or in some states, been convicted in adult court, from being prosecuted in juvenile court for any subsequent offenses. At the end of the 2006 legislative session, 34 states had such a provision.

**Minority:** An individual who is of a race other than White or who is of Latino ethnicity, regardless of race.

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<sup>40</sup> Continuing jurisdiction of the juvenile court is possible for those whose cases originated in the juvenile courts prior to this age.

<sup>41</sup> Each state has authority to decide the age limit of juveniles who can be tried in juvenile courts. In three states, including one in this study, juvenile courts have jurisdiction only of juveniles under the age of 16: Connecticut, New York, and North Carolina. In ten states, including six in this study, the juvenile courts only have jurisdiction over persons of persons under the age of 17: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin. In all the other states, including 12 in this study, juvenile courts have jurisdiction over persons under the age of 18: Alabama, Arizona, California, Florida, Hawaii, Indiana, Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, and Washington.

**Disproportionate Representation or Over-representation:** The proportion of a group with a specific characteristic that exceeds the proportion of that group in the population being considered. For example, if Latino youth in a certain county make up 25% of those arrested and 50% of youth tried as adults, Latino youth as a proportion of juveniles tried as adults would be considered disproportionately represented.

**Disparity:** Different treatment of individuals who are similarly situated or have common characteristics.

**Felony:** A crime punishable by more than a year of imprisonment.

**Violent Offenses:** Include murder, rape, robbery, assault, and other crimes against persons such as domestic violence and negligent homicide.

**Property Offenses:** Include burglary,<sup>42</sup> theft, motor vehicle theft, fraud, forgery, and other property crimes such as arson, damage to property, and buying or receiving stolen property.

**Drug Offenses:** Include drug trafficking, drug sales and delivery, drug possession, and other drug offenses such as possession of drug paraphernalia.

**Public Order Offenses:** Include weapons, felony traffic, and other public order offenses such as gambling, prostitution, rioting, corruption or escape from custody.

**Detention or Pretrial Detention:** Locked confinement in a juvenile detention facility or an adult jail while the case is pending disposition.

**Public Defenders:** These are attorneys employed by the government to represent indigent youth in juvenile or adult court.

**Private Counsel:** These attorneys are retained by and paid for by juveniles and their families to provide representation.

**Assigned Counsel:** These are private attorneys who are chosen by judges and compensated from public funds to represent juveniles in particular cases. Assigned counsel are often utilized in jurisdictions where there is no existing or no full-time public defender program, or when there are multiple defendants charged in one case who require separate or “conflict” counsel.

**Blended Sentencing:** These laws allow adult and juvenile courts to choose between juvenile and adult correctional sanctions in sentencing certain youth. At the end of the 2006 legislative session, 26 states have enacted laws with such provisions.

## B. State Transfer and Filing Laws

Conventional wisdom about the national age of majority is that it is 18, except for the purchase and use of alcohol, which is 21. The age of majority for purposes of charging youth as adults is not uniform across all the states. In fact, Table 1 shows that in 7 of the 19 states that were represented in the study the age at which youth are considered adults for purposes of prosecution as adults is under 17 in six of the states and in New York it is under 16. In other words, juveniles who were 16 or over in New York or 17 or over in Georgia, Illinois, Michigan, Missouri, Texas, or Wisconsin,

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<sup>42</sup> This does not include armed burglary or home invasion, which were categorized as robbery and a violent offense.

were automatically considered to be adults and therefore were not a part of this study. This is because this study looks at only juveniles who had not reached the lower age at which the juvenile court has no jurisdiction. (Table 1)

The laws regarding filing and transfers changed between 1998 and 2007. This is relevant because the analysis will be for data collected in 1998 and therefore the laws that were applicable in 1998 were used for purposes of analysis. As Table 2 shows, only 4 states had direct filing and 11 had statutory exclusion provisions. To make this study relevant to the contemporary environment, it is important to note legislative differences.

**Table 1: Lower Age of Juvenile Court Jurisdiction: 19 States**

<b>State</b>	<b>Lower Age of Juvenile Court Jurisdiction</b>
<b>Alabama</b>	<b>17</b>
<b>Arizona</b>	<b>17</b>
<b>California</b>	<b>17</b>
<b>Florida</b>	<b>17</b>
<b>Georgia</b>	<b>16</b>
<b>Hawaii</b>	<b>17</b>
<b>Illinois</b>	<b>16</b>
<b>Indiana</b>	<b>17</b>
<b>Kentucky</b>	<b>17</b>
<b>Maryland</b>	<b>17</b>
<b>Michigan</b>	<b>16</b>
<b>Missouri</b>	<b>16</b>
<b>New York</b>	<b>15</b>
<b>Ohio</b>	<b>17</b>
<b>Pennsylvania</b>	<b>17</b>
<b>Tennessee</b>	<b>17</b>
<b>Texas</b>	<b>16</b>
<b>Washington</b>	<b>17</b>
<b>Wisconsin</b>	<b>16</b>

Most notably, one state, California, enacted legislation that included statutory exclusion<sup>43</sup> as well as direct filing. This is commonly known as Proposition 21, which was enacted March 7, 2000. Other states expanded their transfer laws, including adding a provision for “once convicted as an adult, always an adult.”<sup>44</sup> Of the 40 counties, 8 were in California, which in the grossest terms represents 20 percent of all the counties, yet only 9.3 percent of all the cases. These 8 counties represent nearly 30 percent of the general population and 38.5 percent of juveniles arrested for crimes, yet only 9.3 percent of those represented in this sample. (Table 2)

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<sup>43</sup> California previously had presumptive waiver provisions (Welfare and Institutions Code, Div. 2, Pt. 1, Ch 2, Sec. 707, which stated that for certain offenses (e.g., murder , person crimes, arson, and drug manufacturing), a minor is “presumed to be not fit for juvenile court, but had the right to present a case in juvenile to overcome the presumption.

<sup>44</sup> Florida law included a mandatory waiver provision for certain offenses and the language in the New York statute speaks only of those “under the age of 16” who are charged with certain offenses being subject to criminal court jurisdiction.

**Table 2: Transfer and Filing Laws: 19 States, 1998 and 2006 Comparisons**

<u>State</u>	<u>Judicial Waiver</u>	<u>Direct Filing</u>	<u>Statutory Exclusion</u>	<u>Once An Adult</u>	<u>Changes Between 1998 and 2006</u>
AL	1		1	1	
AZ	1	1	1	1	
CA	1	1	1	1	Direct Filing and Statutory Exclusion
FL	1	1	1	1	Mandatory Waiver
GA	1	1	1		
HI	1			1	
IL	1		1	1	Once convicted as adult, always an adult
IN	1		1	1	
KY	1				
MD	1		1	1	Once convicted as adult, always an adult
MI	1	1		1	
MO	1			1	
NY			1		Under 16 language - no age specification
OH	1			1	
PA	1		1	1	
TN	1			1	
TX	1			1	
WA	1		1	1	
WI	1		1	1	
<b>Total 1998</b>	18	4	11	14	
<b>Total 2006</b>	36	5	12	16	

### C. Analyses

The analysis of the data will focus on whether the prosecution in adult court achieved the intended purposes of (1) punishing predatory juveniles whose cases were deemed not to be amenable to handling in juvenile courts<sup>45</sup> and (2) doing so in a fair and consistent manner across all racial and ethnic categories of juveniles. In addition, the study explores where youth charged as adults were held pretrial, whether in an adult or juvenile facility, how long they remained detained, and what, if any, effect that had on subsequent case outcomes, such as disposition and sentence. The study examines the overall impact of the transfer or filing mechanism on important events and outcomes in the case,

<sup>45</sup> It should be remembered that juveniles were those who were 17 or younger in 12 of the states in the study – Alabama, Arizona, California, Florida, Hawaii, Indiana, Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, and Washington – whereas in six of the states, juveniles were those 16 or younger – Georgia, Illinois, Michigan, Missouri, Texas, and Wisconsin – and in New York those 15 or younger. This means that in the six states with the lower age at which the juvenile court has no jurisdiction of 16 or New York with the lower age of 15, youth who were 17 and 16, respectively were adults and not subject to transfer laws.



including whether and when youth are released pretrial, the nature of case disposition, and if convicted, the nature of the sentence.

With respect to the race and ethnicity issue, the study looks at over-representation and disparity. To determine if there is racial or ethnic overrepresentation, the study will answer the question of whether the percentage of youth of color charged as adults is higher than the percentage of youth of color who were arrested and the percentage they represent in the general population cohort. The study looks at possible disparities among racial and ethnic groups in terms of differences in pretrial release/detention status, facilities in which they were detained, or types of disposition or sentence.

### III. STUDY HIGHLIGHTS

#### Racial Over-representation

The fact that youth of color were over represented in the cases that were filed in adult court in the 40 jurisdictions reinforced similar findings in innumerable earlier studies.<sup>46</sup> To examine if any over-representation of youth of color existed in the cases that were filed in criminal courts, the percentage of these cases should be compared to their representation in the general juvenile population as well as arrested juvenile population for felony offenses for each of the counties in the study.

The data that are available, however, did not allow such a comparison to be made. The general population of youth information available from the U.S. Department of the Census categorized ages in five year batches, including 10-14 and 15-19. Information was not available for juveniles defined by the upper age of juveniles eligible for juvenile court.<sup>47</sup>

The arrest information from the FBI was also less than ideal. First, arrest information was not available for several of the jurisdictions in the study.<sup>48</sup> Second, there were only three categories of race, white, black, and other. Therefore, the proportion of Latino/Hispanic juveniles who were arrested was unknown. In fact, the arrests for white juveniles cannot be presented because in many jurisdictions, the white category included Latino/Hispanic youth. The other category was a catchall category of Asians, American Indians and Alaskan Natives, Hawaiians and Pacific Islanders as well as those who were simply identified as other than white or black. Therefore, the only arrest figures that can be used are those for African-American youth.

Lastly, the offense categories for which the juveniles were arrested were not defined as felonies or misdemeanors. To minimize the number of misdemeanor offenses certain offense categories were eliminated from the calculation of arrest rates.<sup>49</sup> The offenses that were used to for purposes of calculating the arrest rate included the following: murder and non-negligent manslaughter, manslaughter by negligence, forcible rape, robbery, aggravated assault, burglary/breaking and entering, larceny/theft, motor vehicle theft, other assaults, arson, forgery and counterfeiting, fraud, embezzlement,

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<sup>46</sup> The Consequence Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform (Washington, D.C.: Campaign for Youth Justice, 2007), pp. 11-12.

<sup>47</sup> While this is not ideal, comparing the percentages to the percentage of African American youth used in the BJS report found that these were not significantly different from 1998 data. It should be noted that the information available in the BJS report was for 1999 and not 1998, which also was not ideal. Appendix 2: County Population Characteristics of Persons 10 years to upper age of jurisdiction, 1999 in "Juvenile Felony Defendants in Criminal Courts," *Bureau of Justice Statistics Special Report*, May 2003.

<sup>48</sup> Arrest information was not available either for 1998 or 2004 for all four Florida Counties (Broward, Miami-Dade, Orange, and Hillsborough) and Du Page County, Illinois. In addition, the information for the four New York City boroughs (Bronx, Kings, New York, and Queens), Marion County, IN, and Jackson County, MO was so sparse that it was virtually unusable and could not be used for 1998 and 2004. No arrest information was available for Milwaukee County, Wisconsin and Shelby County, Tennessee in 1998. For 2004, arrest information for Maricopa County, Arizona was too sparse to use.

<sup>49</sup> The offense categories that were omitted from the arrest rates were the following: vandalism, prostitution and commercialized vice, gambling, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, suspicion, curfew and loitering law violations, runaways, and all other offenses.

stolen property, weapons, sex offenses (other than forcible rape and prostitution), drug abuse violations (sales/manufacturing and possession), and offenses against family and children.

It can be argued that even this level of culling will not eliminate completely all misdemeanor offenses. Some of the categories could possibly include misdemeanor offenses, such as “other assaults,” which could include simple assaults, or any of the property offenses, which are distinguished between misdemeanor and felony offenses by the nature of the value of the property (with less than a designated amount being a misdemeanor and more than that amount being a felony). On the other hand, there may be offenses that were eliminated from the arrest figures that could have been felonies, most notably “other offenses,” as well as driving under the influence.

**Table 3: Percentage of African American Juveniles in General Juvenile Population, Juvenile Arrests, and Criminal Court Filings, 1998**

<u>State</u>	<u>County</u>	<u>Percent African Americans</u>		
		<u>Population 1998**</u>	<u>Juvenile Arrests</u>	<u>Criminal Case Filings</u>
Alabama	Jefferson	45.6%	72.1%	77.3%
Arizona	Maricopa	5.5%	11.6%	14.3%
	Pima	4.8%	8.3%	11.4%
California	Alameda	22.6%	43.7%	50.0%
	Los Angeles	12.1%	26.5%	32.6%
	Orange	2.2%	5.3%	10.3%
	Sacramento	13.2%	30.2%	59.6%
	San Bernardino	9.8%	23.0%	28.1%
	San Francisco	15.1%	53.6%	100.0%
	Santa Clara	4.8%	9.6%	2.6%
	Ventura	3.1%	4.9%	16.7%
Florida	Broward	28.2%		69.4%
	Miami-Dade			63.7%
	Hillsborough	20.4%		61.6%
	Orange	23.6%		71.6%
Georgia	Fulton	65.5%	90.6%	97.4%
Hawaii	Honolulu	4.3%	5.0%	0.0%
Illinois	Cook	32.4%	77.6%	84.5%
	Du Page	2.8%		40.0%
Indiana	Marion	30.8%		75.4%
Kentucky	Jefferson	24.2%	50.7%	69.0%
Maryland	Baltimore City	73.8%	88.0%	93.2%
	Montgomery	18.1%	48.8%	58.5%
Michigan	Wayne	48.1%	59.7%	77.3%
Missouri	Jackson	30.8%		54.5%
	St. Louis	22.5%	54.9%	76.7%
New York	Bronx	40.2%		60.8%
	Kings	44.2%		78.3%
	New York	32.8%		65.6%
	Queens	28.8%		54.4%
	Suffolk	9.2%	34.0%	44.4%
	Westchester	19.3%	45.5%	81.8%
Ohio	Hamilton	28.5%	18.8%	80.6%
Pennsylvania	Allegheny	17.5%	50.3%	81.6%
	Philadelphia	48.8%	69.3%	76.8%
Tennessee	Shelby	56.7%		95.7%
Texas	Dallas	28.5%	38.1%	46.4%
	Harris	22.4%	36.8%	50.5%
Washington	King	8.1%	13.1%	26.2%
Wisconsin	Milwaukee	34.2%		81.0%

To determine if this situation of African-American youth representation was unique to 1998, the most recent arrest information was obtained as well as comparable general population figures. (Table 3)

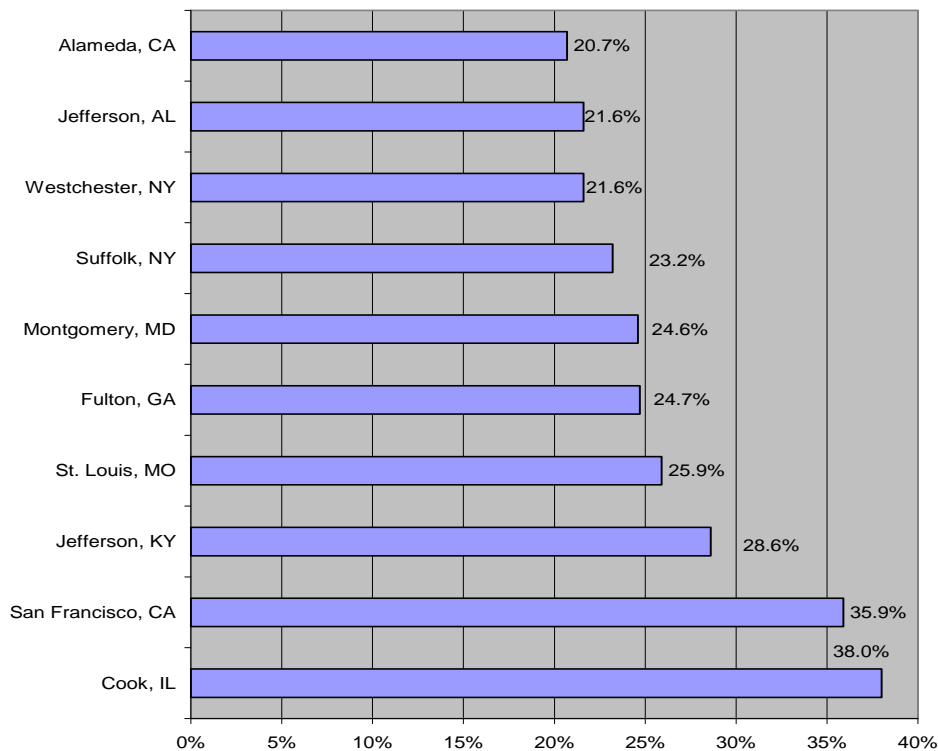
**Table 4: Percentage African American Juveniles in General Juvenile Population, Juvenile Arrests, and Criminal Court Filings, 2004**

<u>State</u>	<u>County</u>	<u>Population 2004</u>	<u>Percentage African Americans</u>	
			<u>Juvenile Arrests</u>	<u>Criminal Court Filings</u>
Alabama	Jefferson	48.9%	83.7%	77.3%
Arizona	Maricopa	4.7%		14.3%
	Pima	3.5%	8.2%	11.4%
California	Alameda	15.8%	44.1%	50.0%
	Los Angeles	10.1%	28.1%	32.6%
	Orange	1.8%	5.7%	10.3%
	Sacramento	12.4%	36.7%	59.6%
	San Bernardino	10.2%	25.1%	28.1%
	San Francisco	11.8%	51.5%	100.0%
	Santa Clara	2.8%	10.3%	2.6%
	Ventura	2.0%	5.0%	16.7%
Florida	Broward	31.9%		69.4%
	Miami-Dade	25.0%		63.7%
	Hillsborough	20.7%		61.6%
	Orange	24.8%		71.6%
Georgia	Fulton	51.7%	92.9%	97.4%
Hawaii	Honolulu	2.9%	4.4%	0.0%
Illinois	Cook	32.5%	79.9%	84.5%
	Du Page	4.6%		40.0%
Indiana	Marion	32.4%		75.4%
Kentucky	Jefferson	25.5%	53.2%	69.0%
Maryland	Baltimore City	73.8%	91.5%	93.2%
	Montgomery	17.2%	47.1%	58.5%
Michigan	Wayne	49.0%	58.1%	77.3%
Missouri	Jackson	30.2%		54.5%
	St. Louis	26.2%	63.6%	76.7%
New York	Bronx	31.2%		60.8%
	Kings	39.1%		78.3%
	New York	21.5%		65.6%
	Queens	24.4%		54.4%
	Suffolk	9.5%	27.6%	44.4%
	Westchester	16.6%	46.9%	81.8%
Ohio	Hamilton	30.4%	22.9%	80.6%
Pennsylvania	Allegheny	18.1%	64.2%	81.6%
	Philadelphia	50.3%	78.9%	76.8%
Tennessee	Shelby	59.8%	84.2%	95.7%
Texas	Dallas	24.6%	38.2%	46.4%
	Harris	20.5%	35.7%	50.5%
Washington	King	7.3%	28.8%	26.2%
Wisconsin	Milwaukee	36.1%	37.4%	81.0%

In both 1998 and 2004, African-American youth were over-represented in the cases filed in criminal court in most of the jurisdictions in this study. Of the 30 jurisdictions in 1998 and the 29 in 2004, for which all three sets of information was available for African American youth – general population, juvenile arrests, and filings of juvenile cases in criminal courts – in all but a few jurisdictions, the over-representation was quite dramatic. In fact, the over-representation followed a distinct linear pattern in 24 of the jurisdictions in 1998 and 23 in 2004. In these jurisdictions, a higher percentage of African American youth were arrested than one would expect based on their percentage of the general population. In turn, a higher percentage of African American youth had their cases filed in a criminal court than expected based on the percentage of those who were arrested. Given that the findings for 1998 are virtually identical to those 2004, one has more confidence that 1998 was not a unique year and furthermore, that the 1998 findings remain relevant. (Tables 3 and 4)

In 1998, in 10 of the 27 jurisdictions that had arrest information, there was a minimum of a 20% difference between the percentage that African American youth represented in the general population and their representation in those arrested – Jefferson County, AL, Alameda County, CA, San Francisco County, CA, Fulton County, GA, Cook County, IL, Jefferson County, KY, Montgomery County, MD, St. Louis County, MO, and Suffolk and Westchester Counties, NY. (Chart 1)

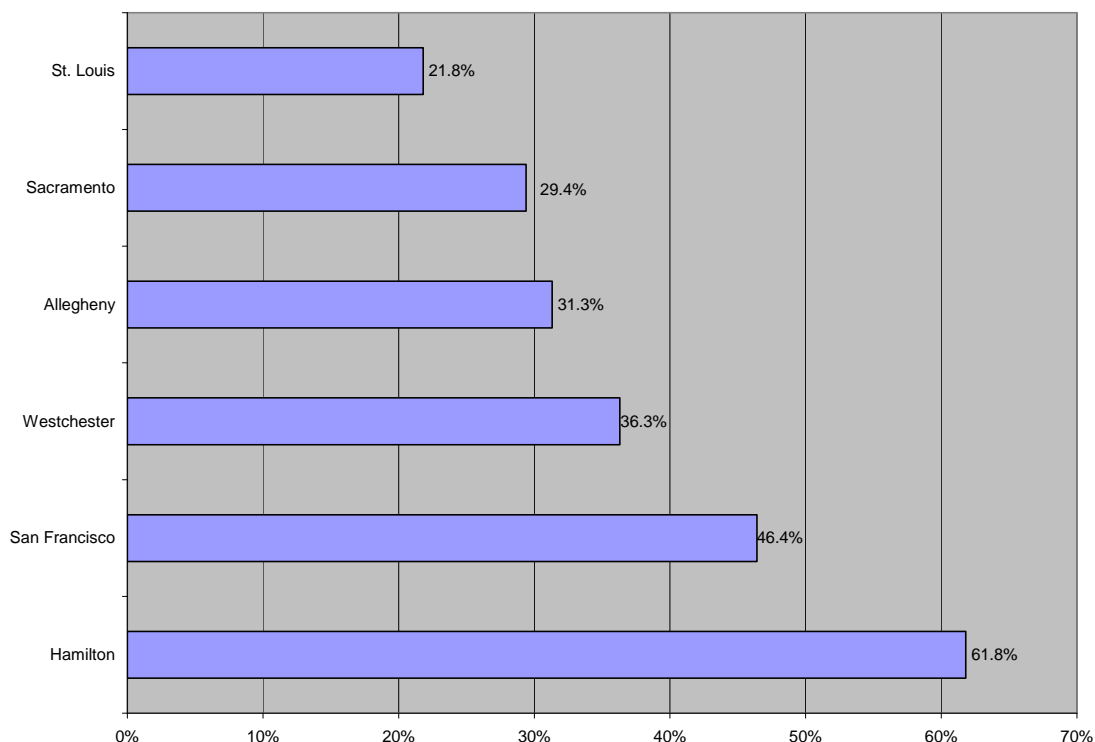
**Chart 1: Jurisdictions with 20 Percent or Higher Difference Between African Americans in Juvenile General Population and Juvenile Arrest Population, 1998**



In the remaining 17 jurisdictions, except for two, there was a higher percentage of African American youth who were arrested than they represented in the general youth population.

In 2004, in 22 of the 28 jurisdictions with arrest information, there was a minimum of a 20 percent difference and many over 40 percent difference between the percentage that African American youth represented of those arrested and their representation of those whose cases were filed in criminal court. There were only two jurisdictions in which the percentage of cases involving African American juveniles that were filed was not higher than the percentage that they represented of those arrested. These two jurisdictions are Santa Clara County, CA and Honolulu County, Hawaii. (Chart 2)

**Chart 2: Jurisdictions with 20 Percent or Higher Difference Between African Americans in Juvenile Arrest Population and Juveniles Filed in Criminal Courts, 2004**



Other studies have shown that “black males charged with drug offenses were substantially more likely than their white counterparts to be tried as adults, suggesting that racial disparities are particularly great among youth charged with drug offenses.”<sup>50</sup>

This study supports in part this finding. In 16 of the 30 jurisdictions for which there were drug arrest data, a higher proportion, in some cases dramatically higher proportion, of African American youth had their cases filed in adult court than the percentage they represented of those arrested for drug offenses. (Table 5) Of these 16 jurisdictions, a substantial portion of drug cases that were filed in criminal courts were for non-trafficking offenses, ranging from a low of 12.3% and a high of 58.5% of drug cases. In more than half of these 16 jurisdictions, African American youth constituted 90 percent or more of youth charged with a drug offense that was filed in criminal court.

In the other 14 jurisdictions, the percentage of drug cases involving African American youth filed in criminal courts represented fewer than expected given their proportion of arrests for drug offenses. Of these the vast majority (nine jurisdictions – Alameda, Orange, San Bernardino, San Francisco, Santa Clara and Ventura Counties, California, Honolulu County, Hawaii, Jackson County, Missouri, and Dallas County, Texas) were cases waived to the criminal court and in none did a juvenile court judge decide to transfer drug cases involving African American youth. In four other jurisdictions, the statutory exclusion did not include drug cases. The only anomaly was Wayne County, Michigan, a direct file state, which does allow filing of drug cases but none involving African American youth were in fact filed in 1998.

<sup>50</sup> Amanda Burgess-Proctor, et al, “Youth Transferred to Adult Court: Racial Disparities.” (Washington, D.C.: Campaign for Youth Justice, *Adultification Series*, Volume 2), 2007, p. 9. Others who have found the same phenomena include Donna Bishop and Charles Frazier, “Consequences of Transfer,” in Jeffrey Fagan and Frank Zimring, Eds. *The Changing Borders of Juvenile Transfer: Transfer of Adolescents to the Criminal Court* (Chicago, Illinois: University of Chicago Press), 2000, pp. 277-320; Jason Zeidenberg, “Drugs and Disparity: The Racial Impact of Illinois’ Practice of Transferring Young Drug Offenders to Adult Court.” (Washington, D.C.: Building Blocks for Youth), 2001.

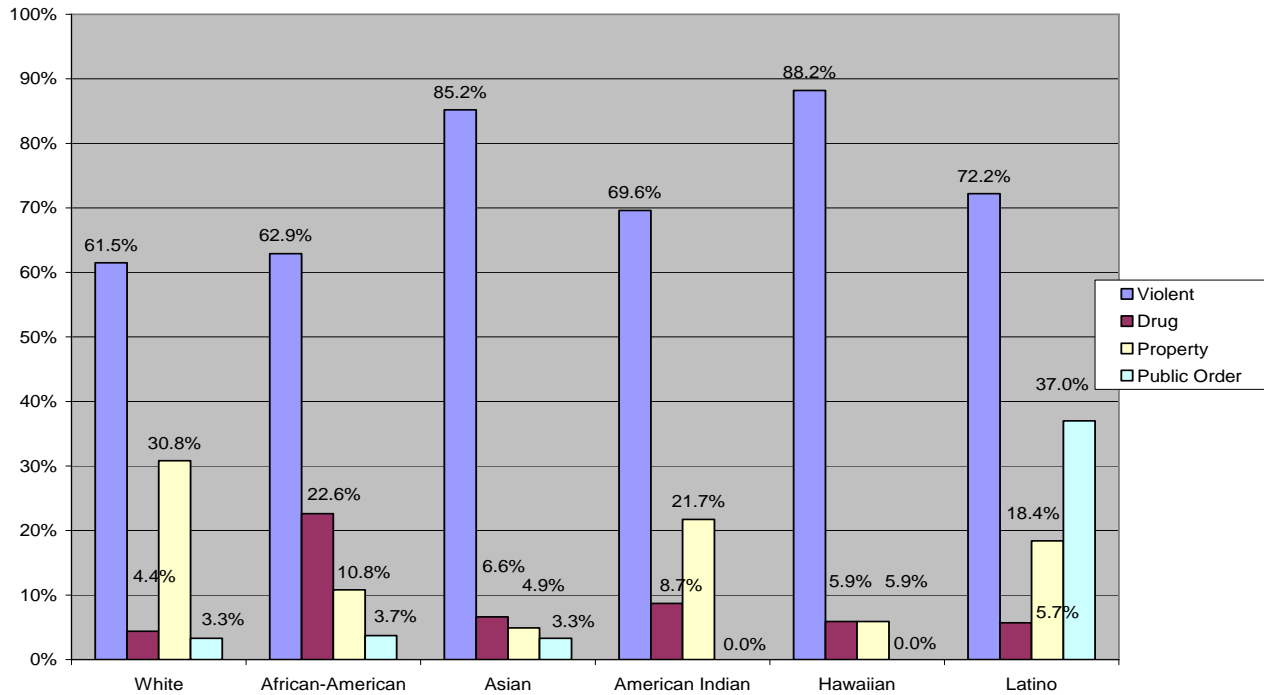
**Table 5: Percentage African American Juveniles of Juveniles Arrested and Whose Cases Were Filed in Criminal Court for Drug Offenses, 1998**

<u>County</u>	<u>State</u>	<u>Drug Arrests %Black</u>	<u>Drug Filings in Criminal Court %Black</u>	<u>Non-Traffic Drug Filings in Criminal Court % Black</u>
Jefferson	AL	70.9%	80.0%	50.0%
Maricopa	AZ	7.4%	10.7%	33.3%
Pima	AZ	5.5%	31.6%	50.0%
Alameda	CA	57.3%	0.0%	
Los Angeles	CA	18.5%	33.3%	
Orange	CA	2.8%	0.0%	
Sacramento	CA	28.9%	100.0%	
San Bernardino	CA	16.2%	0.0%	
San Francisco	CA	62.5%	0.0%	
Santa Clara	CA	7.7%	0.0%	
Ventura	CA	2.1%	0.0%	
Broward	FL		92.5%	44.2%
Miami-Dade	FL		81.1%	23.2%
Hillsborough	FL		90.3%	33.8%
Orange	FL		95.5%	50.0%
Fulton	GA	93.5%	0.0%	
Honolulu	HI	3.4%	0.0%	
Cook	IL	83.1%	95.0%	12.3%
Du Page	IL		0.0%	
Marion	IN	9.9%	96.4%	58.5%
Jefferson	KY	70.5%	87.5%	35.7%
Montgomery	MD	34.1%	100.0%	
Baltimore City	MD	92.9%	95.1%	
Wayne	MI	65.7%	0.0%	
Jackson	MO	24.2%	0.0%	
St. Louis	MO	24.7%	66.7%	
Bronx	NY		0.0%	
Kings	NY		0.0%	
New York	NY		40.0%	
Queens	NY		100.0%	
Suffolk	NY	27.6%	0.0%	
Westchester	NY	42.6%	0.0%	
Hamilton	OH	30.7%	66.7%	50.0%
Allegheny	PA	45.7%	100.0%	33.3%
Philadelphia	PA	63.5%	100.0%	
Shelby	TN	7.1%	90.6%	
Dallas	TX	37.1%	0.0%	
Harris	TX	44.0%	71.4%	40.0%
King	WA	7.0%	0.0%	
Milwaukee	WI		100.0%	

## Racial Disparity

An examination of the distribution of charges brought against youth in the criminal courts in the 40 jurisdictions shows that the percentage of White and African American youth charged with violent offenses was similar (61.5% and 62.9% respectively). (Chart 3) On the other hand, a much higher percentage of African-American youth were charged with drug offenses than White youth, by a ratio of five to one (22.6% versus 4.4%). (Chart 3)

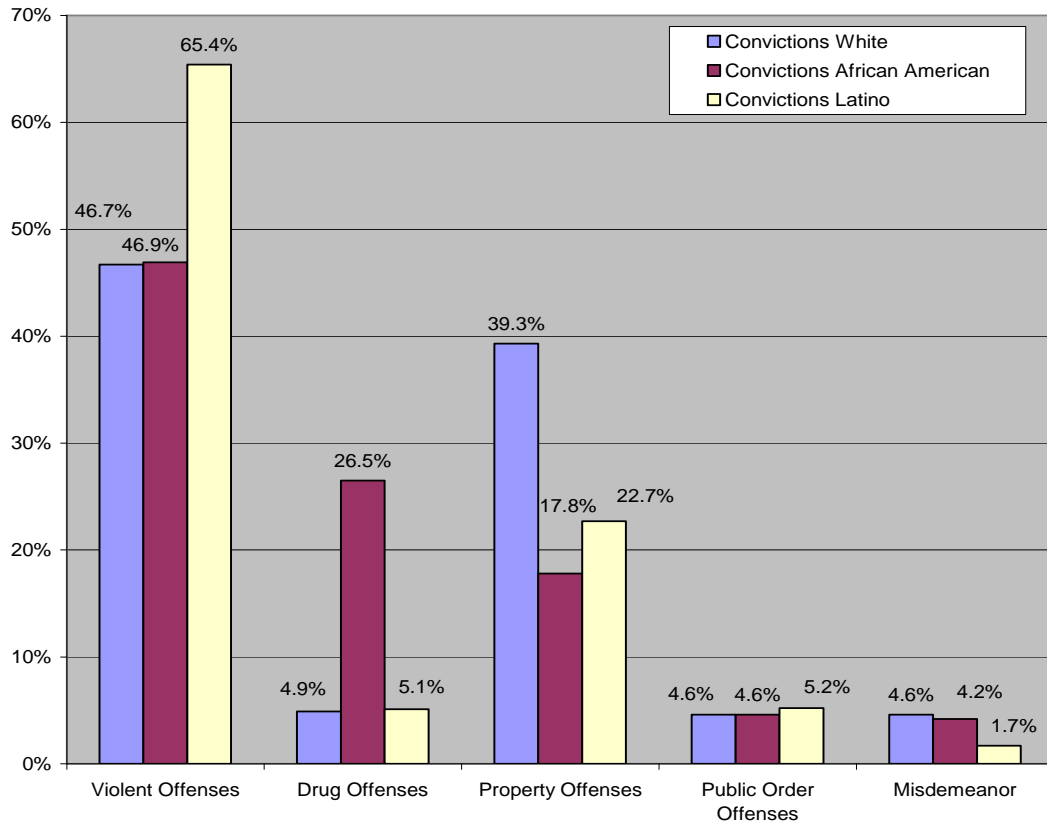
**Chart 3: Percent Juvenile Defendants Charged with Offenses by Race and Latino Ethnicity, 40 Criminal Courts, 1998**



Looking at each racial and Latino category and the nature of the offense for which they were convicted in criminal court, there are some interesting findings. White and African American youth did not differ with respect to violent (46.7% and 46.9%, respectively), public order (4.6% each), or even misdemeanor offenses (4.6% and 4.2%, respectively). The differences are evident for only two category of offenses for which they are convicted, drug and property offenses. African American youth were over 5 and one half times more likely to be convicted of a drug offense than white youth (26.5% and 4.9%, respectively). With respect to property offenses, white youth are twice as likely as African American youth (39.3% versus 17.8%) to be convicted. A higher percentage of Latino youth than either White or African American youth were convicted for violent offenses (64.5%), followed by property offenses (227%) and drug and public order offenses (5.1% and 5.2%, respectively). (Chart 4)



**Chart 4: Percent Juvenile Defendants Who Were Convicted by Conviction Offenses and Race and Latino Ethnicity in Criminal Courts, 1998**

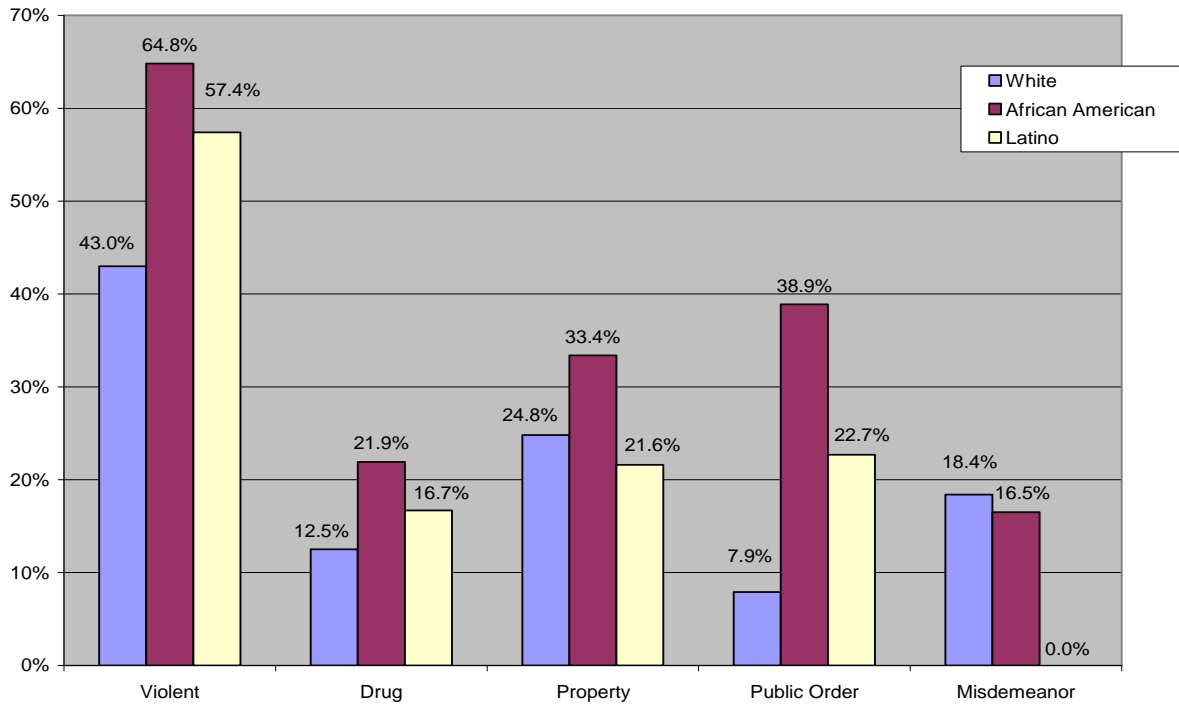


The disparity among the race and Latino ethnic groups was also manifest in the sentences meted out. African American youth were more likely to receive a prison sentence for all offense categories.<sup>51</sup> Latino offenders fell in between the other two groups. Of the white offenders convicted of a violent offense, less than half received a prison sentence (43.0%), whereas 64.8 percent of African Americans and 57.4 percent of Latinos convicted of a violent offense received a prison sentence.<sup>52</sup> (Chart 5)

<sup>51</sup> Strangely enough, a slightly higher percentage of white than African Americans were sentenced to prison for a misdemeanor convictions (18.4% versus 16.5%), all occurring in Maryland, which allows misdemeanor sentences to be served in prison.

<sup>52</sup> There may be racial and ethnic variations in the severity of offenses within each offense category and/or severity of prior juvenile or adult records of the juveniles that may account in part for the disparities observed here.

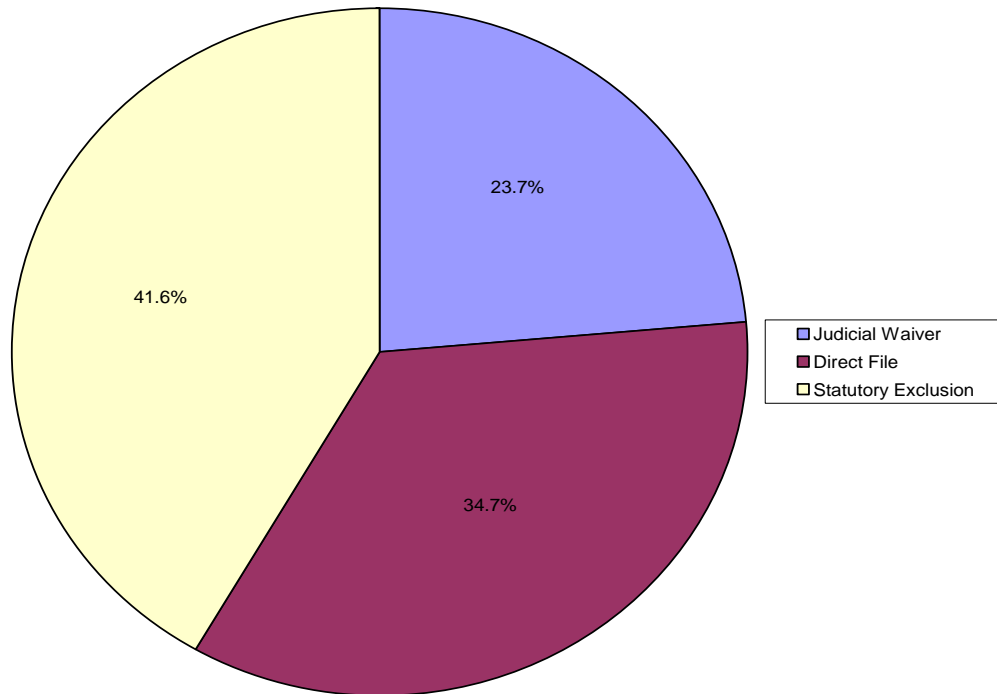
**Chart 5: Percent Juvenile Offenders Sentenced to Prison by Conviction Offenses by Race and Latino Ethnicity, 40 Criminal Courts, 1998**



### Filing Mechanism

A number of the findings raise significant concerns about the manner in which youth, regardless of race, were prosecuted in the adult criminal justice system. First, 76% or three out of every four juvenile defendants had their cases filed in criminal court because of prosecutorial or legislative discretion.<sup>53</sup> (Chart 6)

**Chart 6: Filing Mechanism in 40 Criminal Courts, 1998**



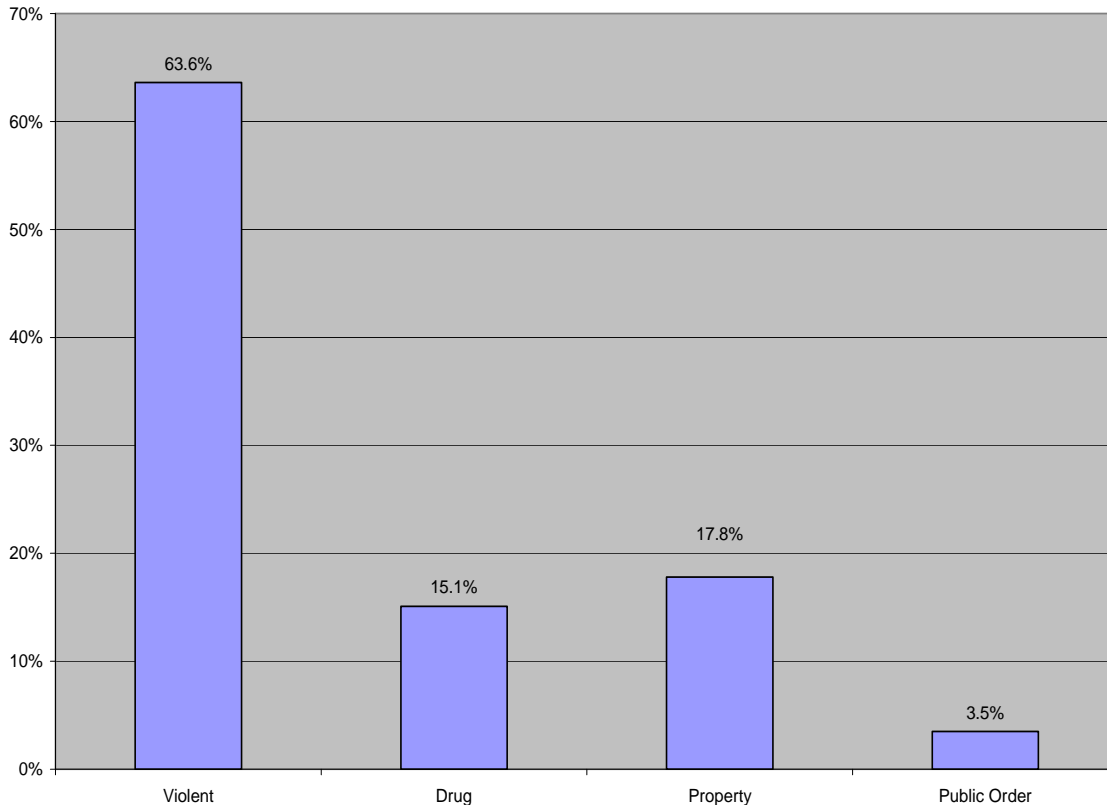
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<sup>53</sup> Finding #5: The decision to send youth to adult court is most often not made by the one person best considered to judge the merits of the youth's case – the juvenile court judge." *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* (Washington, D.C.: Campaign for Youth Justice), 2007, p. 10.

## Seriousness of Arrest Offense and Case Disposition

Prosecution in adult court is expected to be reserved for youth charged with the most serious offenses or those with the severest prior history of serious offenses. However, several of the findings in this report suggest that cases brought against youth prosecuted as adults were either not particularly serious or not very strong. The only measure of the seriousness of the offense its categorization but not its classification.<sup>54</sup> Because of the amount of missing information for the juvenile defendant's prior criminal record – juvenile and adult – it was noted used for analysis purposes in this report.<sup>55</sup> An examination of the offense categories shows that a substantial portion (more than one out of three juvenile defendants or 36.4 %) of those prosecuted as adults were charged with non-violent offenses. (Chart 7)

**Chart 7: Most Serious Felony Offenses Filed Against Juvenile Defendants in 40 Criminal Courts, 1998**

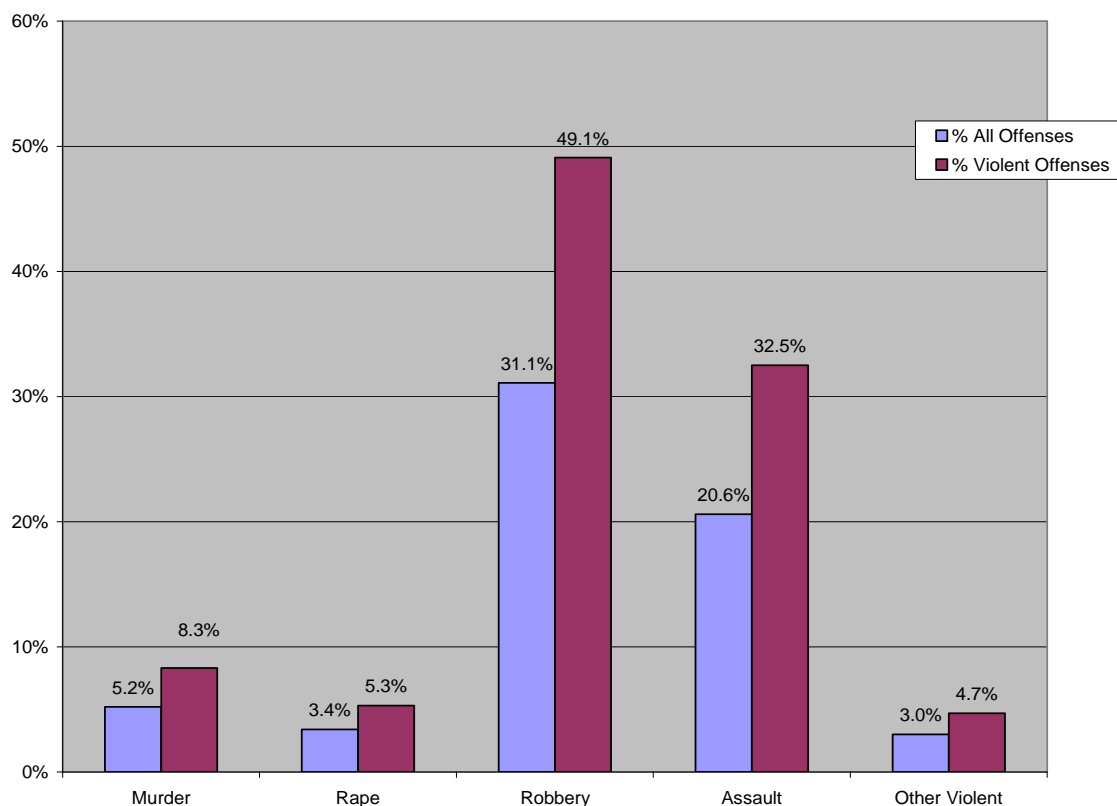


<sup>54</sup> While this study has information about the offenses with which the juveniles were charged, such as robbery or assault or burglary or drug possession, but it is unknown whether all of the offenses within each category is of the same degree of seriousness. For example there are broad ranges in robbery and assault, with the most serious involving use of a weapon and use of force and at the other end no weapon involved or any injury.

<sup>55</sup> For over half of the defendants (51%) it was unknown whether they had a prior juvenile record and for about one-third (29%), whether or not they had a prior adult criminal record. The vast majority (57%) had no prior adult record.

If one parses the violent category, it is evident that robberies were the most prevalent type of violent offense, representing nearly half of all violent offenses and nearly one out of every three of all the offenses that were filed in criminal courts. (Chart 8)

**Chart 8: Specific Violent Offenses as Percentage of All Offenses and All Violent Offenses in 40 Criminal Courts, 1998**

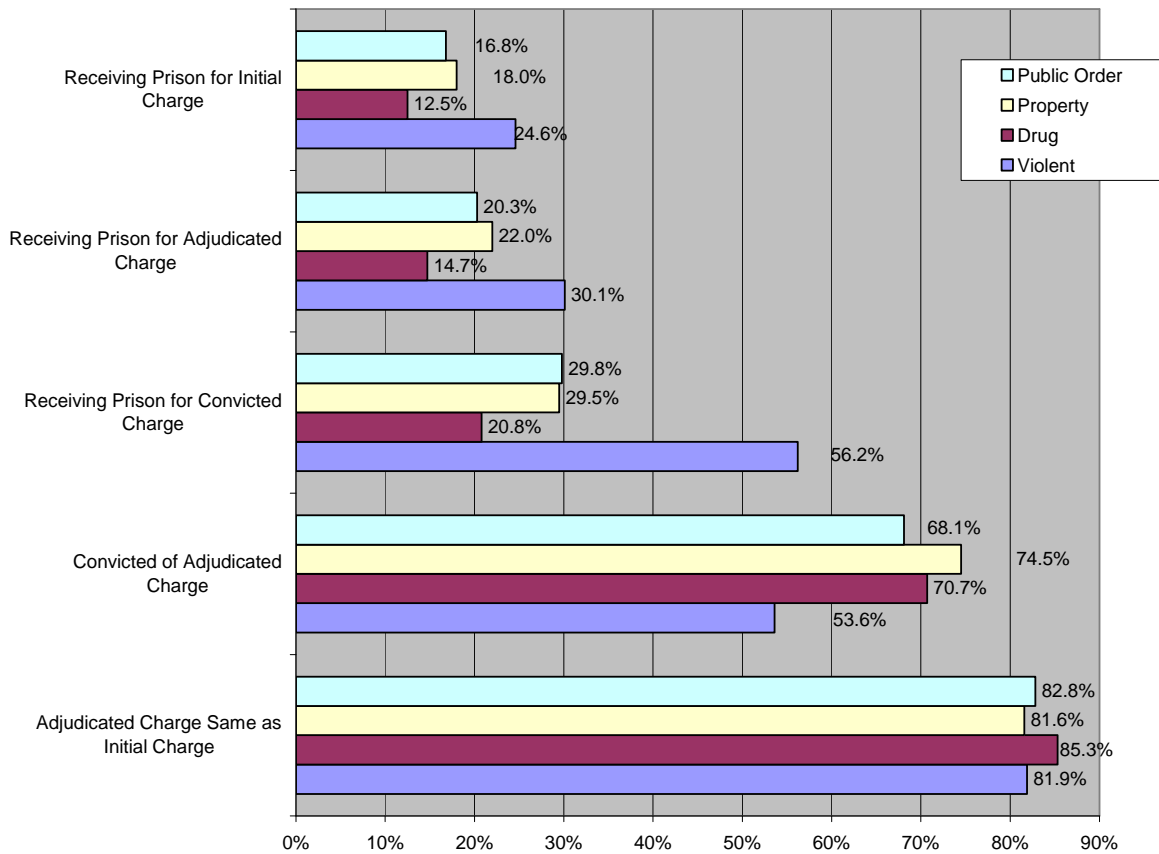


While the definition of robbery is comparable across states, namely the taking of property with the use or threat of force, some distinguish between robberies that occur with the use of a weapon and those without a weapon, even between use of deadly and other weapons. The punishment or sanctions for robbery differ across states. The range of sanctions for a robbery is very wide, in states with indeterminate sentences, usually a minimum of one year in prison to life imprisonment depending on the circumstances.<sup>56</sup>

<sup>56</sup> In New York there are three degrees of robbery ranging in punishment between a minimum of one year to a maximum of 25 years for first degree robbery, 15 years for second degree robbery, and 7 years for third degree robbery. *NY Consolidated Penal Code, 160.15, 160.10, and 160.05*. In Texas, Florida and California there are two degrees of robbery. The range of sentences for robbery in Texas is 5 to life for first degree robbery and 2 to 20 years for second degree robbery. *Texas Criminal Statutes, 12.33, 12.33*. In Florida robbery has three classifications, ranging between a felony in the first degree with a maximum of life imprisonment to robbery by sudden snatching a felony in the third degree carrying a maximum of five years of imprisonment. *Florida Statutes, 812.13, 812.131, 82.135*. California, which has limited ranges of criminal sanctions, metes out between 3 and 9 years for first degree robbery to 2 to 5 years for second degree robbery. Attempted robberies carry even less serious sanctions. *Criminal Penal Code, 211, 212, 212.5, 213*.

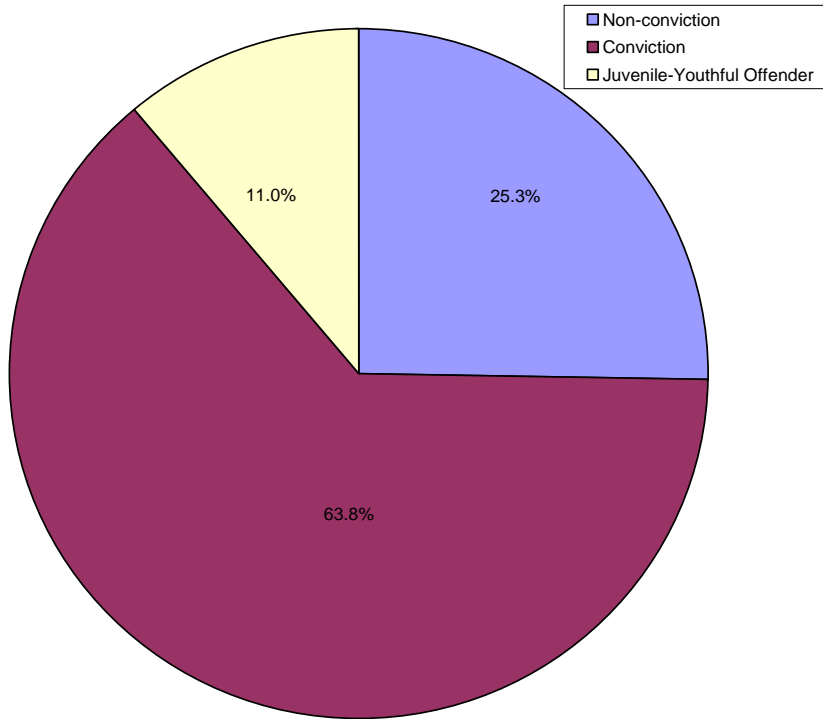
If conviction and a severe sentence are the presumed outcomes of cases filed in the criminal courts, then the findings are revealing that cases with an initial violent charge ended in a conviction for about half of the cases and prison sentence for less than one quarter of the cases. (Chart 9)

**Chart 9: Percentage of Juvenile Offenders Sentenced to Prison on Filed, Adjudicated and Convicted Offenses in 40 Criminal Courts, 1998**



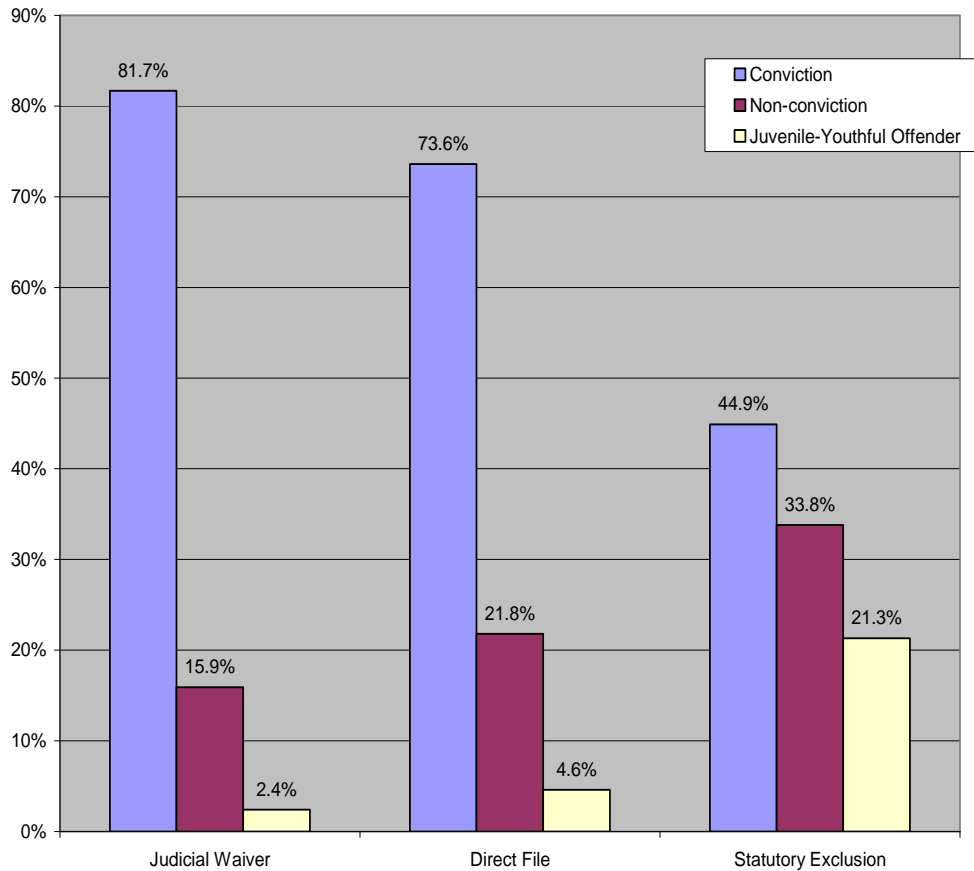
Moreover, the outcome of many of the cases, in fact, over one out of three cases, was not a conviction. The cases were dismissed, adjudicated as a delinquent or youthful offender or were transferred back to the juvenile court for disposition. (Chart 10)

**Chart 10: Final Disposition (Excluding Pending) of Cases of Juvenile Defendants in 40 Criminal Courts, 1998**



Fewer than one half (44.9%) of the statutory exclusion cases filed in criminal courts resulted in a conviction. One out of three cases resulted in a non-conviction<sup>57</sup> and more than one out of five resulted in either transfer to juvenile court or disposition as a delinquent or youthful offender but not an adult. (Chart 11)

**Chart 11: Final Disposition (Excluding Pending) by Filing Mechanism in 40 Criminal Courts, 1998**



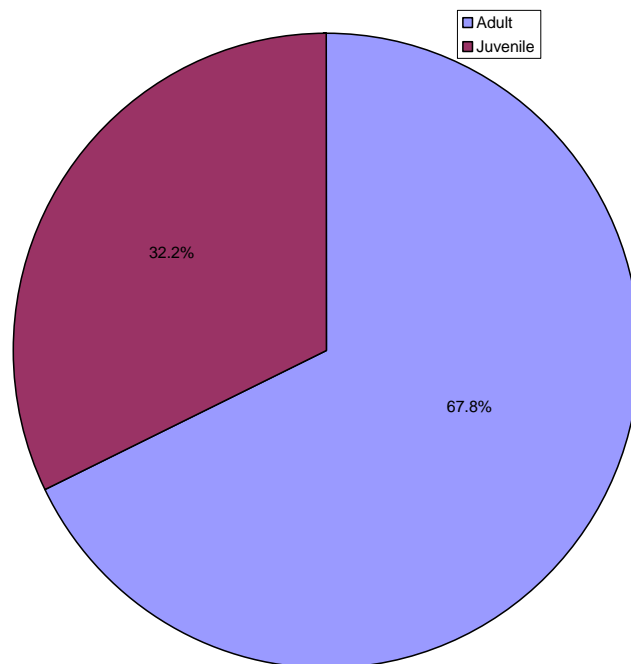
<sup>57</sup> Non-conviction includes cases that were nolle prosequi, dismissed, deferred, diverted, or transferred back to the juvenile court for adjudication.



## Detention Facility

Lastly, whether intended or not, the vast majority of juvenile defendants (two out of every three) who were detained pre-case disposition were held in an adult jail.

**Chart 12: Facility Where Juvenile Defendants Detained Pretrial in 40 Criminal Courts, 1998**



If one of the main goals of these transfer laws was to adjudicate cases of children who commit severe offenses in the adult criminal justice system, this study suggests that this goal is not being achieved. The findings suggest that the adult criminal court is taking on numerous cases that should be prosecuted in the juvenile justice system. Furthermore, despite the fact that a great many youth had their cases dismissed, reduced to misdemeanors, or transferred, two-thirds of the youth who were detained pretrial were held in adult jails.<sup>58</sup> (Chart 12)

According to the pretrial laws in the United States, in four of the states in the study, youth prosecuted as adults must be detained in an adult jail.<sup>59</sup> (Table 6) In only two of the states, juveniles regardless of where their cases are tried, adult or juvenile court, must be detained in a juvenile facility. In the remaining states, juveniles may be detained in adult jails.

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<sup>58</sup> The type of facility was recorded only for those juveniles who were detained throughout the pretrial period and never released prior to the disposition of their cases.

<sup>59</sup> Malessa C. Goemann et al., "Children Being Tried as Adults: Pre-Trial Detention laws in the U.S." *Policy Brief Adulthood Series*, Vol. 3 (Washington, D.C.: Campaign for Youth Justice), 2006.

**Table 6: Pretrial Detention Laws: 19 States**

<u>State</u>	<u>Jail Mandate</u>	<u>Permits Jail</u>	<u>Juvenile Facility Only</u>
Alabama	1		
Arizona		1	
California		1	
Florida	1*		
Georgia		1	
Hawaii	1		
Illinois		1	
Indiana		1	
Kentucky			1
Maryland	1**		
Michigan		1	
Missouri		1	
New York			1***
Ohio		1	
Pennsylvania		1	
Tennessee		1	
Texas		1	
Washington		1	
Wisconsin	1****	1	

\* Except for juveniles charged with misdemeanor offenses  
 \*\* If there is possibility of case originating in adult will be transferred to juvenile court, court may detain in juvenile facility  
 \*\*\* Unless state division of youth approves confinement in an adult jail  
 \*\*\*\* Jail mandated for waived juveniles and permitted if adult court has original jurisdiction

To put into perspective the findings of the 1998-1999 study, the number of juveniles held as adults in adult jails was examined across a broader swath of time. The collection of such information began in 1994 by the Bureau of Justice Statistics sponsored Annual Survey of Jails.<sup>60</sup> A snapshot of the jail population is taken mid-year or June 30 of each respective year. Looking at the 10-year period, 1994 to 2006, it is apparent that while there is no trend, 1998 was not an unusual year. (Table 7)

<sup>60</sup> “The Annual Survey of Jails is the only data collection effort that provides an annual source of data on local jails and jail inmates. . . . State statutes and judicial practices allow juveniles to be incarcerated in adult jails under a variety of circumstances. Because of the differing statutes and practices, however, accurate and comparable data on juveniles is difficult to collect.” *Annual Survey of Jails: Jurisdiction-Level Data*, U.S. Department of Justice, Bureau of Justice Statistics, Inter-University Consortium for Political and Social Research.

**Table 7: Number of Juveniles Held as Adults Mid-Year, 1994-2006**<sup>61</sup>

Mid-year (June 30)	Number of Juveniles Held As Adults	Mid-year (June 30)	Number of Juveniles Held As Adults
1994	5,100	2001	6,757
1995	5,900	2002	6,112
1996	5,700	2003	5,484
1997	7,007	2004	6,159
1998	6,542	2005	5,750
1999	8,598	2006	4,836
2000	6,129		

According to the most recent mid-year survey of jails, the number of juveniles held as adults in jails across the United States in 2006 declined by 16% since the previous year (although the number of juveniles held as juveniles increased by 26% in the same 12-month period).<sup>62</sup> This one day count of the number of inmates housed in the jail on that one day does not represent how many persons were admitted to the jail on that day or any other day. It also does not depict how long the number of inmates who were in the jail on that one day had been detained; it does not distinguish between those persons who might have been admitted into the jail on June 30 and those who may be detained days or even weeks or months. (Table 7)

The closest statistic available to show how many persons are admitted into jails is from the 1999 jail census<sup>63</sup> that reports that during a one-week period, between June 24 and June 30, 1999 a total of “about 219,000 persons entered jails”<sup>64</sup> or an average of 31,286 jail admissions every day. On June 30, 1999 the one-day count of the number of persons in jails across the United States was 607,978.<sup>65</sup> Therefore, based on the average number of persons who were admitted into the jails each day, the number of persons who were admitted into jails in 1999 would be nearly 11 and a half million.<sup>66</sup> Using the same logic, there would have been about 160,000 juveniles prosecuted as adults who were admitted throughout 1999.<sup>67</sup>

To specifically address the 40 counties in the study, the most recent jail statistics, which were for 2005 and 2006, were obtained from the U.S. Department of Justice, Bureau of Justice Statistics. (Table 8 ) In the 40 counties in this study, there has been a 42.8 percent decline in the number of juveniles prosecuted as adults who were in county jails at mid-year 1998 and 2006 from 2,592 on June 30, 1998 to 1,482 on June 30, 2006. Between mid-year 2005 and mid-year 2006 there was nearly a 12 percent decrease (11.9%).<sup>68</sup> This is misleading, however, because only a few counties account for most of the decline, whereas in most counties either the number of juveniles who were detained in county jails as adults was the same or differed very little between 1998 and 2006 (17 counties) or was actually higher in 2006 than in 1998 (4

<sup>61</sup> The mid-year figures were cited in each edition of the *Bureau of Justice Statistics Bulletin*, “Prison and Jail Inmates at Midyear, 1994” through , “Prison and Jail Inmates at Midyear, 2006.”

<sup>62</sup> *Bureau of Justice Statistics Bulletin*, “Prison and Jail Inmates at Midyear, 2006,” June 2007.

<sup>63</sup> James J. Stephan, *Census of Jails, 1999* (Washington, D.C.: Bureau of Justice Statistics), August 2001.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> The calculation is as follows 31,286 new daily admissions (219,000 new admissions over a week) times 365, the number of days in a year, translated into annual figures of 11,419,390 new admissions.

<sup>67</sup> The number of juveniles who were held as adults on June 30, 1999 was 8,598. The daily count of 8,598 of the total of all inmates (607,978) held on June 30, 1999 represented 1.4%. 1.4% of the 11 million (11,419,390) that was calculated as the number of yearly admissions of all inmates is 159,871.

<sup>68</sup> Survey counts for New York City, which is made up of five counties – Bronx, Kings, New York, Queens, and Richmond – were city wide. The survey is not a census and does not necessarily capture all jails in a county.

counties). About one-third of the counties (12) the numbers fluctuated between 1998 and 2005 and 2006, which should not be surprising in figures that represent a one-day snapshot rather than a trend.

In a few counties, there were no juveniles held as adults in 2005 but a few were in jails on June 30, 1998, including Orange County, California (N=17), Westchester, New York (N=53), and King County, Washington (N=9). On the other hand, in Hamilton County, Ohio where there were no juveniles held as adults in the county jail in 1998, 13 and 18 were held in 2005 and 2006, respectively. Because the count of jail inmates was for only one day it is difficult to discern how many juveniles (or anyone else) are detained throughout the year and how long they remain detained once they are admitted into the jail. (Table 8)

**Table 8: Number of Juveniles Held as Adults in County Jails**  
**Mid-year 1998, 2005 and 2006**

County	State	Juveniles Detained as Adults in County Jail		
		1998	2005	2006
Jefferson	AL	0	0	0
Maricopa	AZ	199	172	170
Pima	AZ	52	31	35
Alameda	CA	0	0	0
Los Angeles	CA	45	3	6
Orange	CA	17	0	0
Sacramento	CA	0	0	0
San Bernardino	CA	0	0	0
San Francisco	CA	0	0	0
Santa Clara	CA	0	0	0
Ventura	CA	0	0	0
Broward	FL	125	51	60
Miami-Dade	FL	194	125	63
Hillsborough	FL	64	102	84
Orange	FL	72	30	59
Fulton	GA	N/A	N/A	N/A
Honolulu	HI	N/A	N/A	N/A
Cook	IL	N/A	N/A	N/A
Du Page	IL	N/A	N/A	N/A
Marion	IN	0	23	0
Jefferson	KY	0	0	N/A
Montgomery	MD	8	8	16
Baltimore City	MD	101	113	86
Wayne	MI	N/A	N/A	N/A
Jackson	MO	N/A	N/A	N/A
St. Louis	MO	N/A	N/A	N/A
New York City	NY	N/A	N/A	N/A
Westchester	NY	N/A	N/A	N/A
Suffolk	NY	N/A	N/A	N/A
Hamilton	OH	0	13	18
Allegheny	PA	27	26	0
Philadelphia	PA	105	102	132
Shelby	TN	65	39	86
Dallas	TX	N/A	N/A	N/A
Harris	TX	N/A	N/A	N/A
King	WA	9	0	0
Milwaukee	WI	N/A	N/A	N/A
<b>Total</b>		<b>1083</b>	<b>838</b>	<b>815</b>

The one day count does not distinguish among the juveniles who are held as adults in a pretrial status, or serving a conviction in the jail, or awaiting transfer to a prison or juvenile detention center. Information that provides a more detailed look at how many juveniles were detained prior to their case disposition and the length of their detention is much more useful in determining the extent to which juveniles are exposed to adult jails than relying on a one-day count. (Table 9)

**Table 9: The Length of Pretrial Jail Stays of Juveniles  
Prosecuted As Adults in 40 Criminal Courts, 1998**

<u>County</u>	<u>State</u>	<u>Measured in Days</u>										<u>Total</u>
		<u>2 less</u>	<u>3 to 5</u>	<u>6 to 10</u>	<u>11 to 30</u>	<u>31-60</u>	<u>61-90</u>	<u>91-120</u>	<u>121-180</u>	<u>181-270</u>	<u>271+</u>	
Jefferson	AL	59	11	7	3	7	3	2	4	1	16	113
Maricopa	AZ	104	13	29	62	88	84	59	58	32	22	551
Pima	AZ	64	16	23	29	18	31	30	28	13	10	262
Alameda	CA	0	0	0	0	0	0	0	0	0	1	1
Los Angeles	CA	5	5	8	55	42	52	51	92	64	49	423
Orange	CA	1	2	0	6	5	5	4	7	12	23	65
Sacramento	CA	0	1	0	2	4	2	4	7	10	8	38
San Bernardino	CA	4	0	2	4	4	4	3	0	0	4	25
San Francisco	CA	0	0	0	0	0	0	0	0	0	0	0
Santa Clara	CA	7	0	5	4	7	2	2	1	2	7	37
Ventura	CA	0	0	0	1	0	1	1	2	1	0	6
Broward	FL	121	18	33	58	58	42	35	38	47	51	501
Miami-Dade	FL	51	1	3	140	134	73	42	67	46	93	650
Hillsborough	FL	124	21	32	66	48	46	39	43	19	13	451
Orange	FL	20	8	3	25	32	22	30	55	26	9	230
Fulton	GA	3	2	2	7	1	0	4	3	4	10	36
Honolulu*	HI	1	0	1	2	3	0	1	2	3	2	15
Cook	IL	0	0	0	0	0	0	0	0	0	0	0
DuPage	IL	2	0	0	0	3	0	0	0	0	0	5
Marion	IN	52	21	17	22	12	7	10	14	8	6	169
Jefferson	KY	0	0	0	0	0	0	0	0	0	0	0
Montgomery	MD	31	2	2	8	6	1	1	4	2	4	61
Baltimore City	MD	178	50	14	76	56	19	26	39	73	47	578
Wayne	MI	0	0	0	0	0	0	0	0	0	0	0
Jackson	MO	4	2	3	0	1	0	0	0	6	4	20
St. Louis County	MO	5	2	1	5	3	1	4	3	4	0	28
New York City	NY	0	0	0	0	0	0	0	0	0	0	0
Westchester	NY	0	0	0	0	0	0	0	0	0	0	0
Suffolk	NY	0	0	0	0	0	0	0	0	0	0	0
Hamilton	OH	4	0	1	4	11	4	5	5	1	0	35
Allegheny	PA	17	1	0	3	0	0	3	1	2	0	27
Philadelphia	PA	74	17	24	62	35	18	5	19	47	35	336
Shelby	TN	5	0	3	50	27	8	7	7	11	24	142
Dallas	TX	4	1	0	1	1	2	4	6	5	2	26
Harris	TX	1	6	8	11	8	15	10	19	12	13	103
King	WA	2	8	5	3	8	5	5	5	3	1	45
Milwaukee	WI	6	0	1	2	13	7	5	4	4	0	42
<b>Total</b>		<b>949</b>	<b>208</b>	<b>227</b>	<b>711</b>	<b>635</b>	<b>454</b>	<b>392</b>	<b>533</b>	<b>458</b>	<b>454</b>	<b>5021</b>

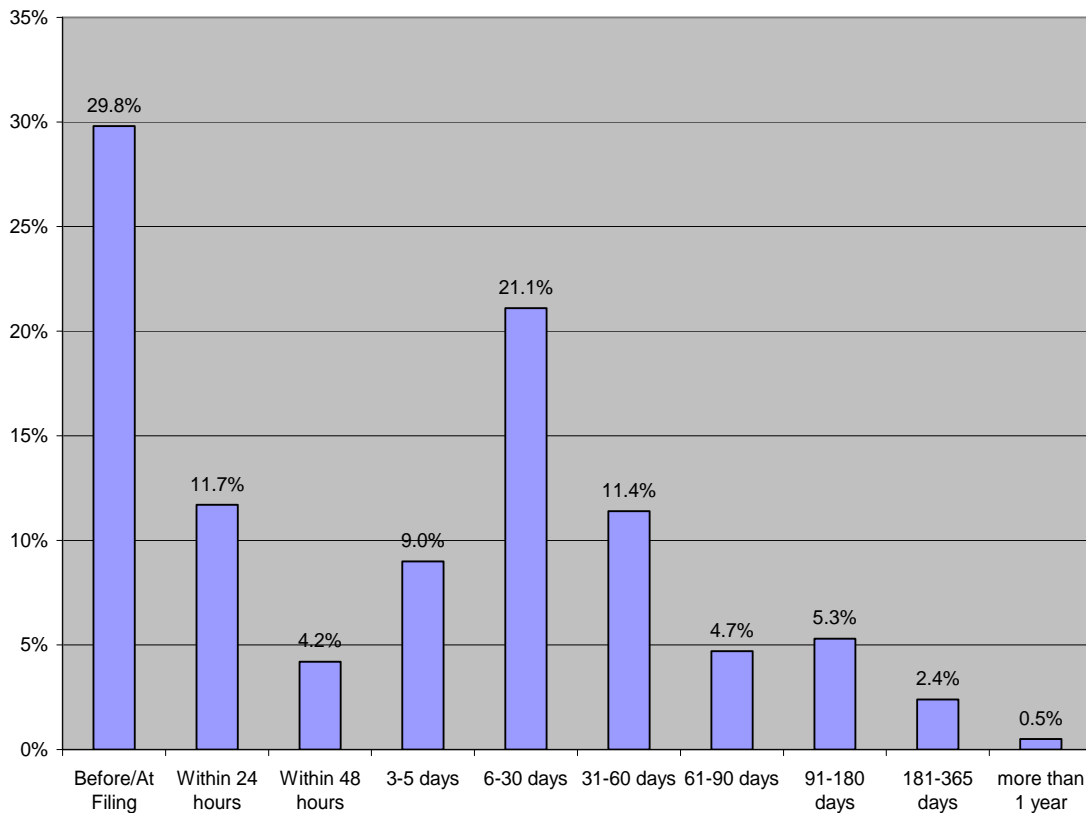
Over the course of 1998<sup>69</sup>, a total of 5,021 juveniles were held in adult jail for at least 48 hours, and nearly one out of five held in adult jails at least six months. In 1998-1999, no juveniles were held in adult jails in the following jurisdictions: San Francisco County, California, Cook County, Illinois, Jefferson County, Kentucky, Wayne County, Michigan, and all six New York Counties – Bronx, Kings, New York, Queens, Suffolk and Westchester.

<sup>69</sup> Actually the study tracked cases between 1998 and the end of 1999 so cases that were not filed until later in 1998, the time spent in jail would be in part, or completely, in 1999 rather than 1998.

Looking at the other end of the spectrum, in 1998-1999 all the cases of juveniles prosecuted as adults in the following counties were detained in adult jail: Jefferson County, Alabama, all four Florida Counties (Broward, Miami-Dade, Hillsborough, and Orange), Du Page County, Illinois, Marion County, Indiana, the two Missouri Counties, Jackson and St. Louis, Hamilton County, Ohio, the two Pennsylvania Counties, Allegheny and Philadelphia, as well as the two Texas Counties, Dallas and Harris. To this list we should add Honolulu County, Hawaii, which according to the law holds all of the juveniles prosecuted as adults in the adult jail. For these counties, the length of stay in Table 9 represents all the time spent in adult jails. For example, 166 youth were held at least nine months in an adult jail in the four Florida Counties in 1998.

There are several very important findings concerning the pre-case disposition release or detention status of the youth whose cases are filed in criminal court and if detained, the facility where they are held pretrial. The first is that nearly one out of three juveniles (29.8%) whose cases are filed in criminal court were never taken into custody as an adult – they either were released prior to or at the time of the filing and remained in that status until their cases were disposed. Interestingly, nearly half (46.8%) of the juveniles whose cases were filed in adult court were either never detained or released within 48 hours. These findings are at odds with the supposed dangerousness of these youth. The criminal court judges in these cases either deemed it safe to continue the release status of these youth or set such release conditions that could be met within two days, which would hardly be the situation in serious cases. There is another side of the picture, however, as a majority of youth were detained in adult jails, some for considerable amounts of time. Nearly one out of four youth (23.5%) were detained longer than one month. (Chart 13)

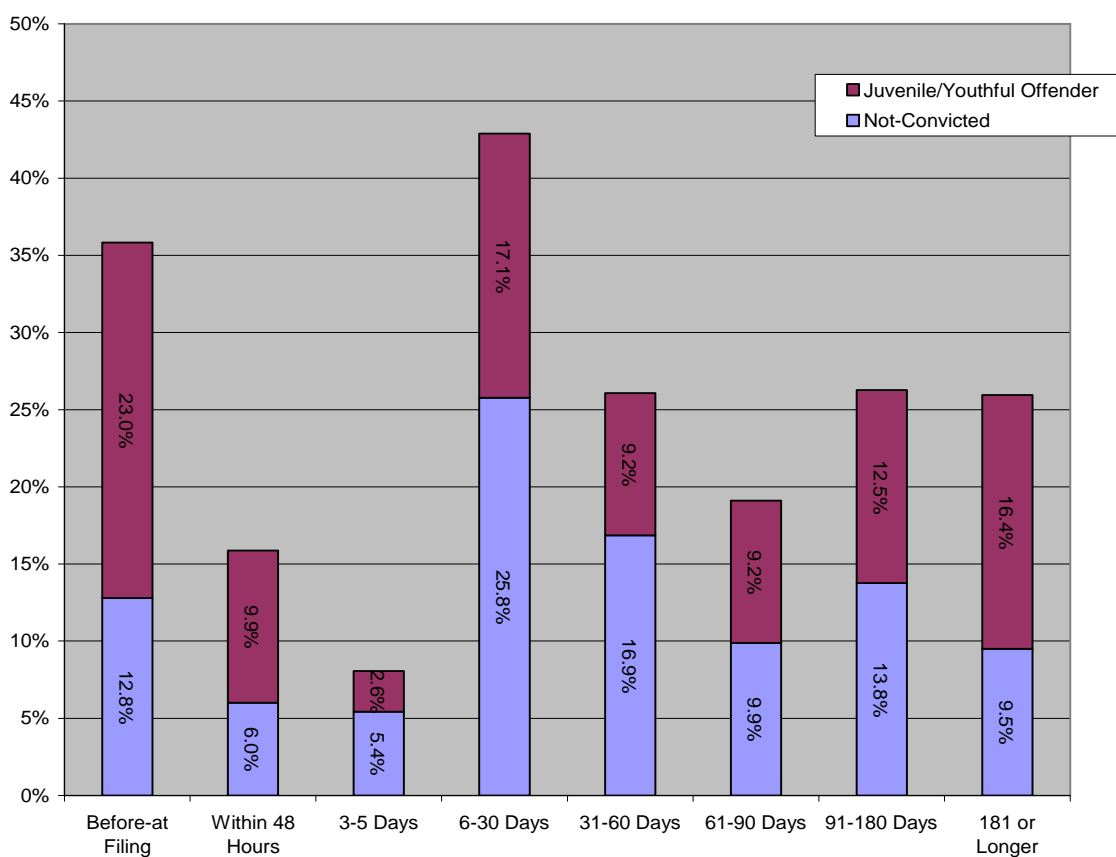
**Chart 13: Length of Time from Filing to Release Pretrial in 40 Criminal Courts, 1998**



Another major finding has to do with how many youth whose only exposure to adult jail is at the pretrial stage because ultimately their cases were either dismissed from criminal court or their cases were disposed as juveniles and not adults.

One out of every four juveniles who were detained in an adult facility for any amount of time pending their case disposition did not get convicted as an adult. (Chart 14) This means that these cases were filed in adult court only to be ultimately dismissed or transferred to juvenile court and all the while the youth were exposed to adults in an adult jail.<sup>70</sup> Some were released after a stay of one night, others after two nights, and many more who remained detained in an adult jail for week or even months. Over half (55.2%) of the youth who were not adjudicated guilty as adults and thereby were not sentenced to incarceration, were nonetheless held pretrial in an adult jail for at least some period of time.<sup>71</sup> Nearly 16 percent (15.9%) were held in an adult jail for at least 48 hours, which research demonstrates is a highly vulnerable time for persons, especially youth. # percentage of youth commit or try to commit suicide within 48 hours of being placed in an adult facility. Forty-five percent were detained in an adult jail between one and two months before they were released and ultimately not convicted in criminal court. Most amazing is the finding that one out of four youth who were detained in adult jail before being released were held longer than six months. (Chart 14)

**Chart 14: Percentage of Juvenile Defendants Not-Convicted as Adults or Adjudicated as Youthful Offenders or Juvenile Delinquents in Criminal Courts, 1998 by the Number of Days They Were Detained in Adult Jails**



<sup>70</sup> Only those jurisdictions where all juveniles whose cases are filed in criminal courts are held in adult court were counted as being held in adult court. In jurisdictions where either the judge chose the facility where a youth was held pretrial or the age of the youth – so that a youth before reaching age of majority is held in a juvenile facility but transferred to an adult jail once he/she turns 18 or whatever is the age of majority in the state - are not included in these analyses.

<sup>71</sup> This constitutes an undercount because another 20 percent of the youth are in jurisdictions where the facility where they are held may be decided on a case-by-case basis.



## **Summary and Conclusions:**

The findings provide added credence to those of innumerable other studies that (1) African-American youth were disproportionately caught in the net of adult prosecution and adjudication in most of the jurisdictions, when measured against their proportion of the general or arrested population and (2) a high proportion of youth were held in adult jails, and for many whose cases did not result in a conviction in adult court this was their only exposure to an adult facility. Other findings indicated that the filing mechanisms, particularly the statutory exclusion and to a lesser extent direct filing, were less successful in identifying those youth who were deemed to be inappropriate for juvenile court than the judicial waiver. Many youth whose cases were filed in adult court by these mechanisms were subjected to detention in adult jail only to have their cases be transferred back to the juvenile court system or otherwise thrown out of the adult system.

The next section features a more detailed examination of the data, including the specific demographics of the juveniles in these 40 counties, the nature of the offense for which they were charged, their pretrial status, their case disposition, and if convicted, the sentence.

## IV. FINDINGS

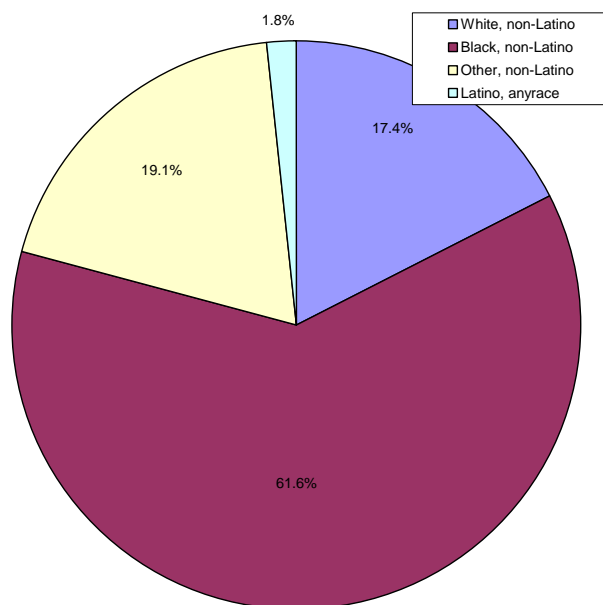
### A. Demographics

All references to any demographic characteristics, including race, Latino ethnicity, age, and gender exclude cases where the information for any or a combination of characteristics, where appropriate, was unknown or missing.<sup>72</sup> Race and Latino ethnicity were separated so that the race category did not include persons with Latino ethnicity whereas persons of Latino ethnicity were categorized as any race or unknown race.<sup>73</sup>

#### Race and Latino Ethnicity

During 1998 in the 40 jurisdictions in the study, where information for race and Latino ethnicity was available, the overwhelming majority, nearly 83 percent (82.6%) of cases that were filed in adult courts involved youth of color. African-American constituted over three-fifths (61.6%) of the entire sample and Latino youth made up almost one out of every five defendants (19.1%).<sup>74</sup> (Chart 15)

**Chart 15: Race and Latino Ethnicity of Juvenile Defendants in Criminal Courts, 1998**



There were variations among the participating jurisdictions, with youth of color constituting between 60% and 100% of those youth prosecuted as adults in 38 out of the 40 counties. There were only two sites – Du Page County, Illinois and King County, Washington – where White youth represented a majority of the cases (60% and 59.5%, respectively). In 14 sites, White youth constituted 10 percent or less of the juvenile defendants. In two counties – Alameda and San Francisco – all of the cases prosecuted in the adult court involved youth of color. (Table 10)

<sup>72</sup> Out of 7,135 cases, information on race and Latino ethnicity was not available for 62 cases.

<sup>73</sup> There were three juvenile defendants who were characterized as American Indian and Latino, another 36 as African-American and Latino and 170 as White and Latino. For analysis purposes, all of these were placed exclusively into the Latino Ethnicity category.

<sup>74</sup> Because juveniles who were American Indian and Alaskan Natives (.4%), Asian (1.1%), and Hawaiian and Pacific Islander (.3%) constituted less than 2%, henceforth they will be aggregated into an “other minority” racial category.

**Table 10: Jurisdictions Where Youth of Color Comprised 90 Percent or Higher, 1998**

<u>County</u>	<u>Percentage of Cases Filed Involving Youth of Color</u>
Santa Clara	90%
Westchester	91%
Los Angeles	92%
Sacramento	94%
Queens	94%
Baltimore City	94%
New York	94%
Cook	96%
Shelby	96%
Kings	97%
Fulton	97%
Bronx	98%
Alameda	100%
San Francisco	100%

In eight of the sites African-American youth made up over 80 percent of defendants. In seven of the sites, Latino youth constituted between one-third and two-thirds of the cases. (Table 11)

**Table 11: Jurisdictions Where American Youth and Latino Youth Comprised 80 Percent and 30 Percent or Higher, Respectively, 1998**

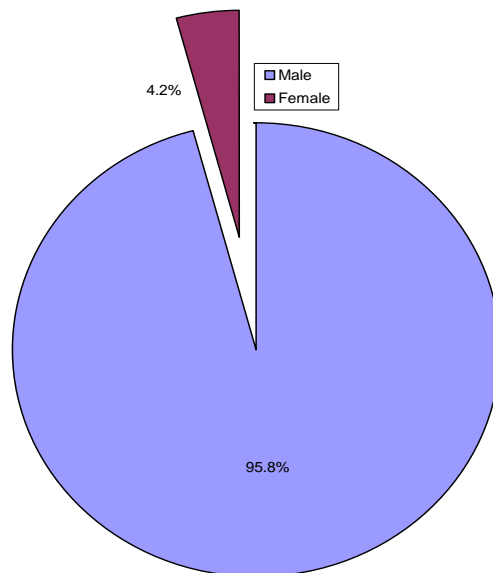
<u>County</u>	<u>% Cases Involving African American Youth</u>	<u>County</u>	<u>% Cases Involving Latino/Hispanic Youth</u>
Hamilton	81%	Ventura	33%
Milwaukee	81%	Maricopa	45%
Allegheny	82%	San Bernardino	50%
Westchester	82%	Los Angeles	53%
Cook	85%	Santa Clara	54%
Baltimore City	93%	Pima	55%
Fulton	97%	Orange	68%
San Francisco	100%		

Gender<sup>75</sup>

Overall, males represented nearly 96 percent (95.8%) of all the juvenile defendants in the study. (Chart 16)

<sup>75</sup> There were only two cases in which the gender of the defendant was unknown and these were omitted from the analysis.

**Chart 16: Gender of Juvenile Defendants in Criminal Courts, 1998**



There were 11 counties in which all of the juvenile defendants were male. (Table 12)

**Table 12: Jurisdictions Where Male Juvenile Defendants Comprised All of the Cases Filed in Criminal Courts and Female Juvenile Defendants over 10 Percent, Respectively, 1998**

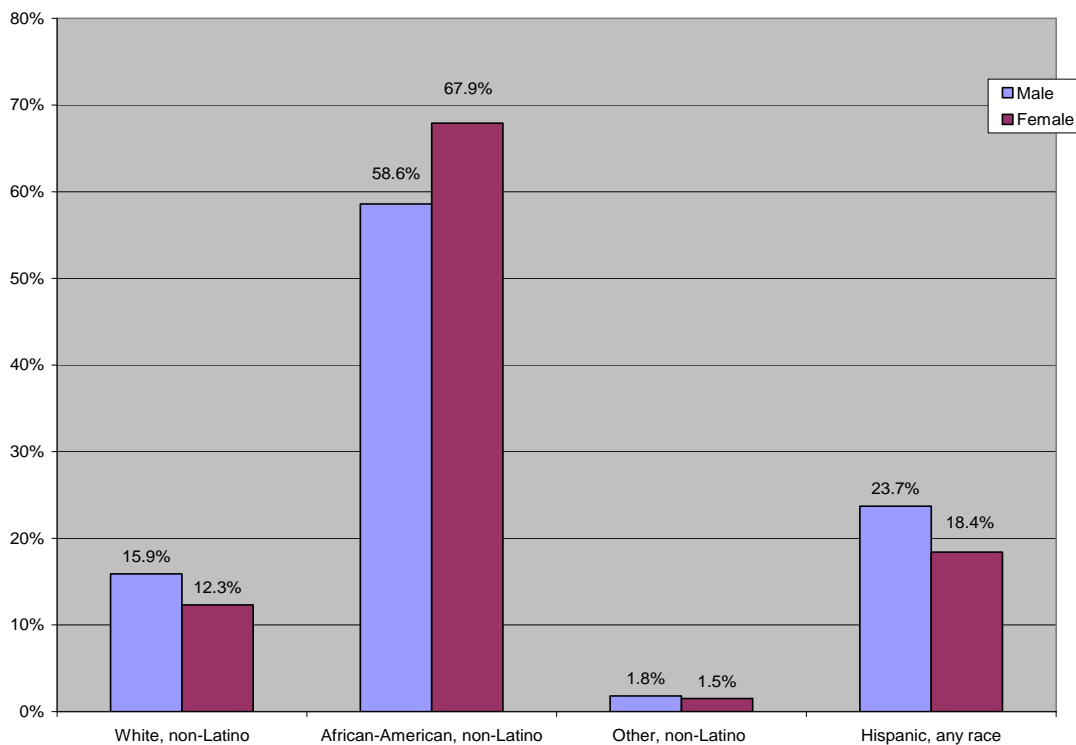
<u>County</u>	<u>All Cases Involved Males</u>	<u>County</u>	<u>% Cases Involving Females</u>
Dallas, TX	100%	Milwaukee, CA	11.9%
Hamilton, OH	100%	Honolulu, HI	13.3%
Westchester, NY	100%	Bronx, NY	13.7%
St. Louis, MO	100%	New York, NY	14.6%
Jackson, MO	100%	Suffolk, NY	14.8%
Du Page, IL	100%	Allegheny, PA	16.0%
Fulton, GA	100%	Kings, NY	16.2%
Ventura, CA	100%		
San Francisco, CA	100%		
Orange, CA	100%		
Alameda, CA	100%		

In the other seven counties, females represented 11.9 percent to 16.5 percent of the cases filed in criminal courts. (Table 12)

Race & Ethnicity by Gender

A comparison of the two genders reveals that an even higher percentage of female juvenile defendants were non-white than male juvenile defendants. Female youth of color represented 88 percent of all female juvenile defendants, compared to 83 percent of male youth of color of all male juvenile defendants. (Chart 17)

**Chart 17: Gender and Race and Latino Ethnicity of Juvenile Defendants in Criminal Courts, 1998**



In eight of the sites, all female juvenile defendants were African American. In 23 of the 29 sites that had female juvenile defendants, the majority were African American. In 27 of the 29, minority females made up the majority of female juvenile defendants.<sup>76</sup> (Table 13)

**Table 13: Jurisdictions Where African American Females Comprised All of Female Juvenile Defendants and Latinas Comprised 30 Percent or More of All of Female Juvenile Defendants in Criminal Courts, 1998, Respectively**

<u>County</u>	<u>African American Female Juveniles</u>	<u>County</u>	<u>Latina Female Juveniles</u>
Sacramento	100%	Montgomery	25%
Santa Clara	100%	Bronx	31%
Wayne	100%	Harris	33%
Suffolk	100%	Maricopa	36%
Allegheny	100%	Pima	40%
Philadelphia	100%	Los Angeles	70%
Shelby	100%		
Milwaukee	100%		

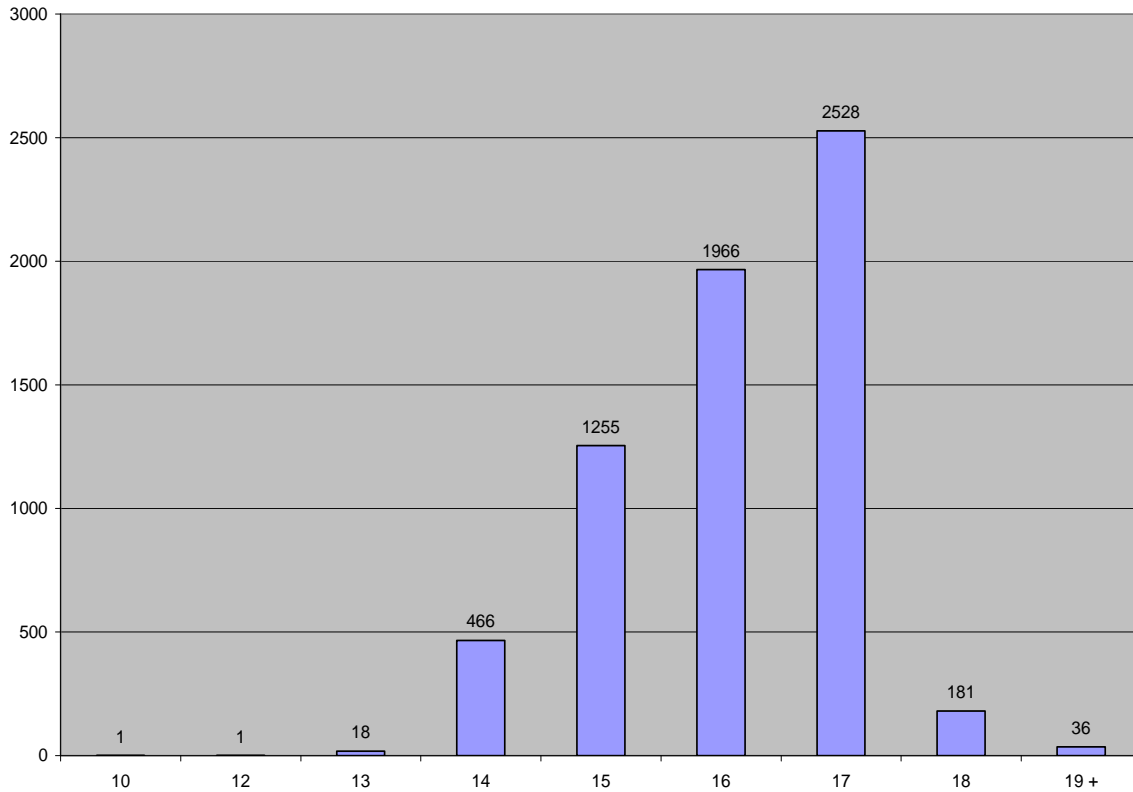
Put another way, one out of every eight female juvenile defendants was white, non-Latina; one out of every 6 male juvenile defendants was white, non-Latino. The percentage of female juvenile defendants who were African-American was higher than their male counterparts, 69 percent compared to 61.3 percent, respectively. The percentage of female juvenile defendants who were Latina was lower than their male counterparts, 17 percent compared to 19.2 percent, respectively. (Chart 17)

<sup>76</sup> In San Bernardino County, California and King County, Washington the only female juveniles (one each) were white.

Age<sup>77</sup>

The majority of juveniles – three out of five juveniles – whose cases were filed in adult court were younger than 17 years of age. Nearly one out of three juveniles was 16 years old and another 27 percent were 15 or younger. A total of 486 youth, representing nearly 7 percent of all the cases were 14 years or younger.<sup>78</sup> (Charts 18 and 19)

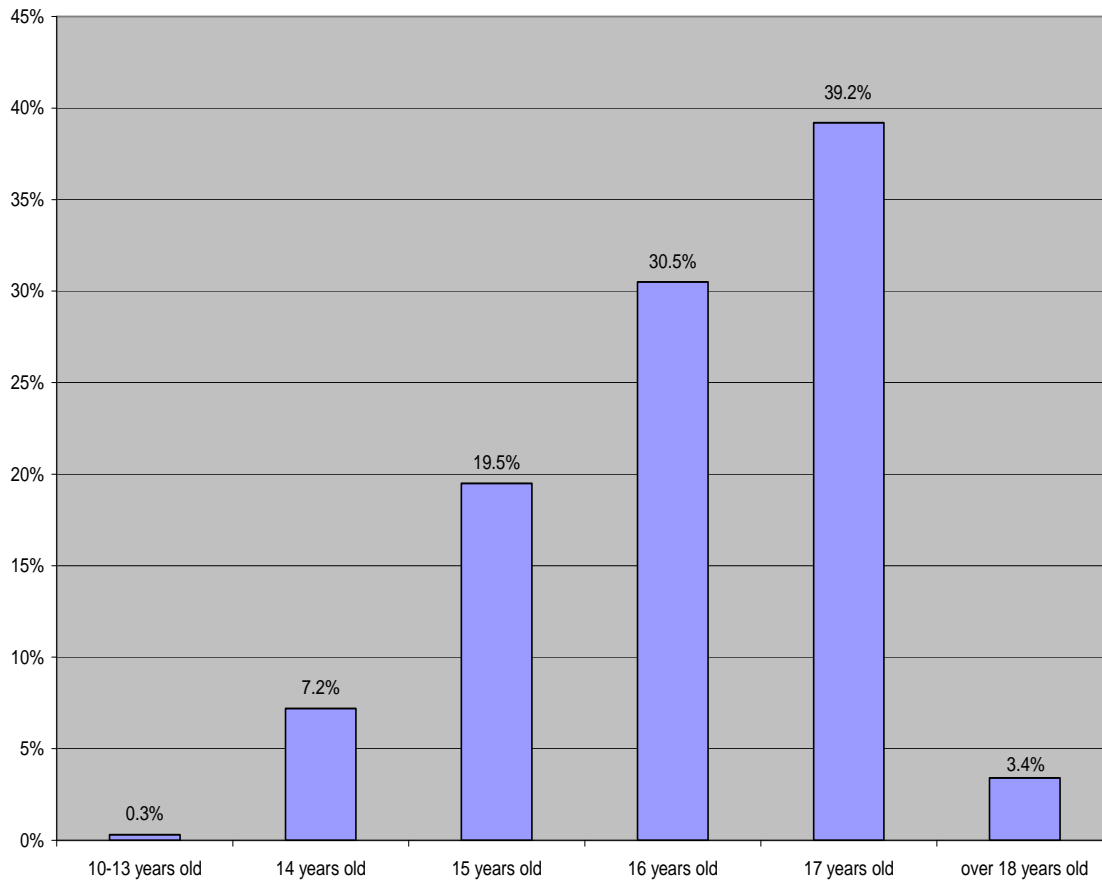
**Chart 18: Age At Arrest of Juvenile Defendants (Number) in Criminal Courts, 1998**



<sup>77</sup> Age at arrest was unavailable for 683 juvenile defendants because the arrest date was unknown in 682 cases and the date of birth was unknown in one case.

<sup>78</sup> One juvenile defendant was 10 years old, another one was 12 years old, 18 were 13 years of age, and 466 were 14 years of age at the time of their arrest.

**Chart 19: Age At Arrest of Juvenile Defendants (Percentage) in Criminal Courts, 1998**



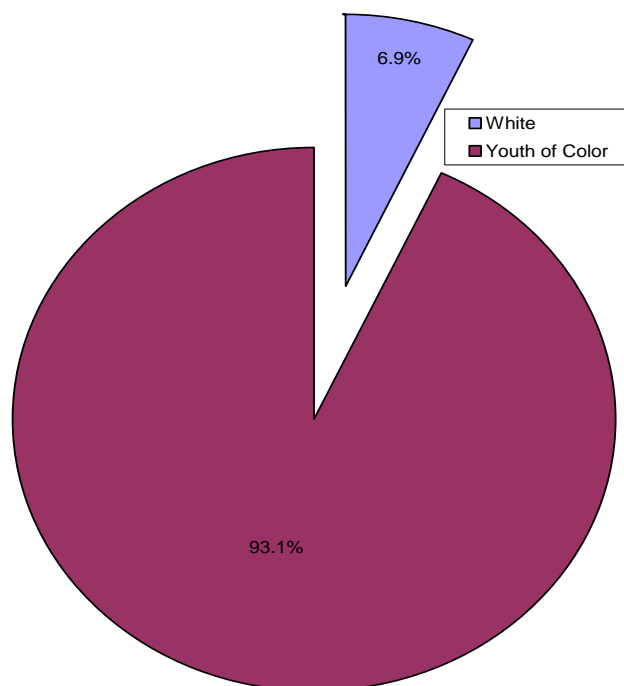
A small percentage of cases (3.4%) involved persons who were older than 18 years of age when they were arrested for crimes they were charged with committing when they were deemed juveniles.<sup>79</sup> (Chart 19)

Of the juvenile defendants who were 14 or under at time of arrest, nearly 93 percent (92.9%) were minority children. Of these two-thirds were African American and the other third Latino. Only 4 or less than one percent of the juvenile defendants were in the other minority category. (Chart 20)

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<sup>79</sup> There were 181 defendants who were 18 years old at the time arrest and another 36 who were 19 years or older, with the oldest defendant being 26 years of age.

**Chart 20: Race of Juvenile Defendants Under 14 Years of Age in Criminal Courts, 1998**



## **B. Felony Arrests –**

Of the 30 jurisdictions for which all three sets of information – general population,<sup>80</sup> juvenile arrests,<sup>81</sup> and filings<sup>82</sup> of juvenile cases in criminal courts – was available for African American youth, in all but a few jurisdictions, the disparity is quite dramatic. In fact the over-representation of African American follows a distinct linear pattern in 26 of the 30 jurisdictions. In these 26 jurisdictions, a higher percentage of African American youth were arrested than one would expect based on their percentage of the general population. In turn, a higher percentage of African American youth had their cases filed in a criminal court than expected based on the percentage of those who were arrested.

It is interesting to take a closer look at the four jurisdictions that do not follow this pattern.<sup>83</sup> In two of the jurisdictions, while the percentage of African American youth who were arrested was lower than their percentage in the general population, the percentage of cases involving African American youth that were filed in criminal courts was dramatically higher than the general population. In Shelby County, Tennessee, nearly 80% more cases involving African American youth were filed in the criminal courts than the percent arrested. A similar situation existed in Marion County, there was a 60% (59.3%) increase between African American youth who were arrested and whose cases were filed in criminal court. (Table 3)

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<sup>80</sup> The general population numbers were obtained from the U.S. Census Bureau of ages 15-19.

<sup>81</sup> The arrests figures were obtained from the Federal Bureau of Investigation (FBI) for all arrests of juveniles, including misdemeanor as well as felony offenses.

<sup>82</sup> The filing information is for exclusively felony offenses.

<sup>83</sup> In Santa Clara County, although a higher percentage of African American juveniles were arrested than they represent in the general population (8.4% versus 4.8%), the percentage whose cases were filed in criminal court was lower (2.6%). In the case of Honolulu County, the percentage of African Americans who were arrested was the same as their percentage of the general population. No cases involving African American youth were filed in criminal courts.

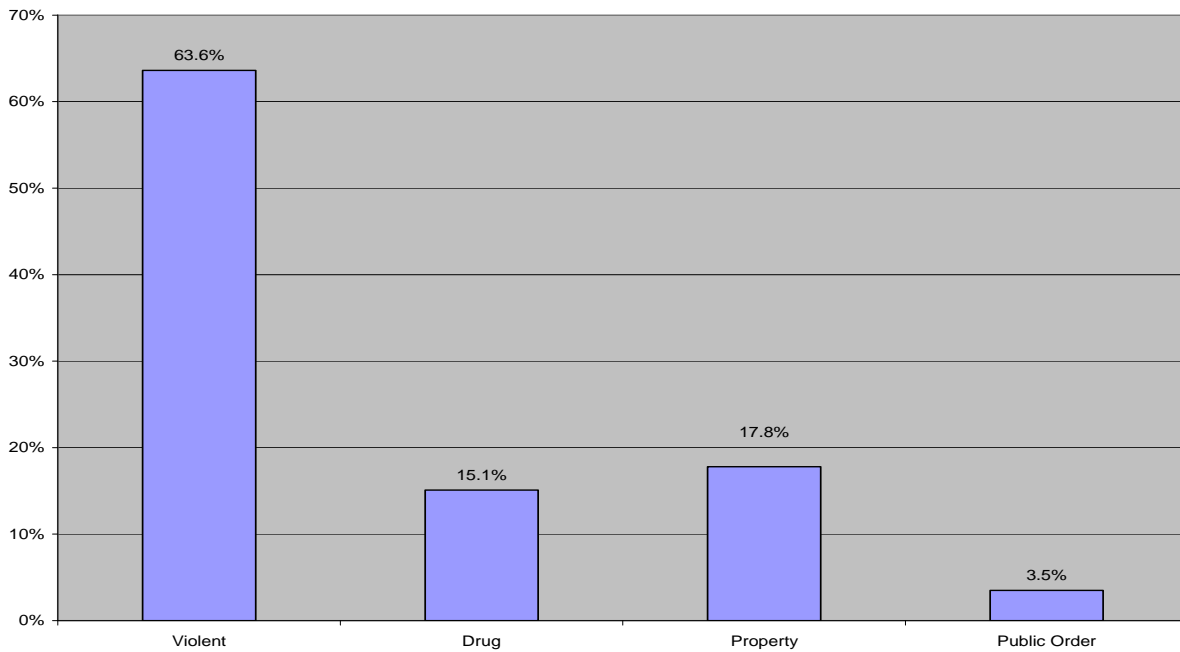


In 10 of the jurisdictions, there was a minimum of a 20% difference between the percentage that African American youth represented in the general population and their representation in those arrested – Jefferson County, AL, Alameda and San Francisco Counties, CA, Fulton County, GA, Cook County, IL, Jefferson County, KY, Montgomery County, MD, St. Louis County, MO, and Suffolk and Westchester Counties, NY. (Chart 1)

### C. Charges Filed

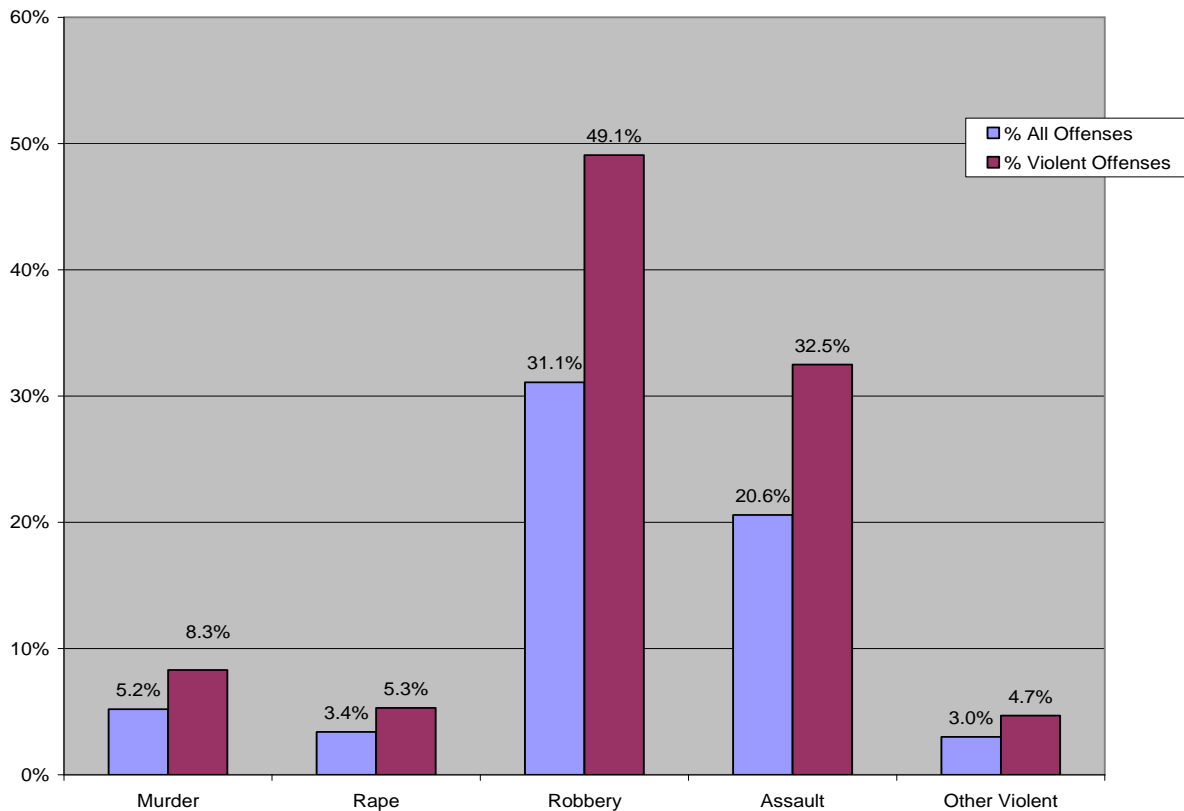
While most of the juvenile defendants in this study (63.6%) were charged with a violent offense over one-third of the cases involved non-violent offense. The next highest percentage was for property crimes (17.8%), followed by drug offenses (15.1%). Only 3.5 percent of the juvenile defendants were charged with a public order offense. (Chart 21)

**Chart 21: Most Serious Felony Offense Charges Against Juvenile Defendants in Criminal Courts, 1998**



The most prevalent arrest charge was robbery, of which nearly one out of every three defendants was charged (31.1%). The next most prevalent was assault, of which one out of every five juvenile defendants was charged (20.6%). A majority of all juvenile defendants prosecuted as adults (51.7%) were charged with either one of these two offenses. (Chart 22)

**Chart 22: Percentage of Specific Violent Offenses of All and Violent Offenses  
Juvenile Defendants in Criminal Courts, 1998**

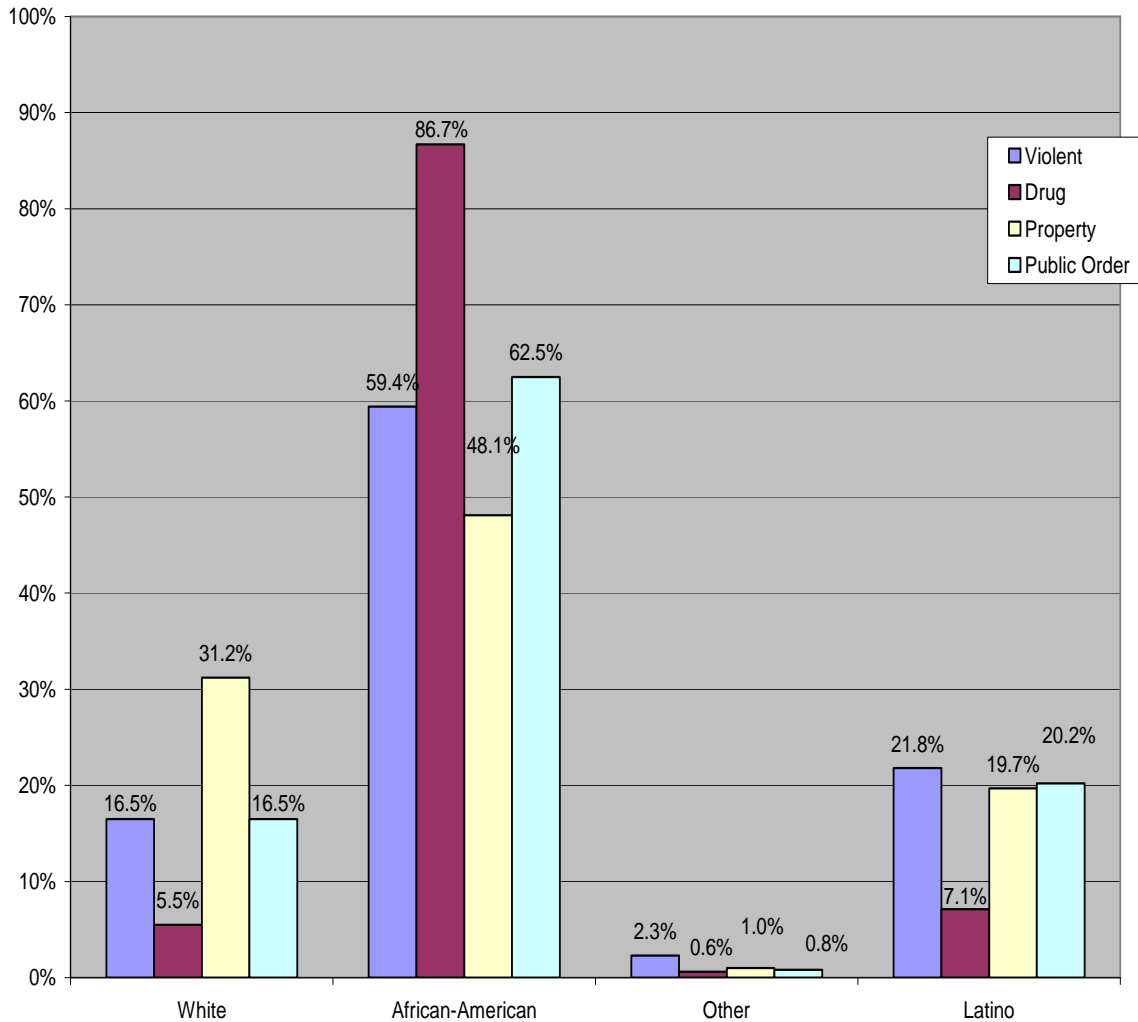


Juvenile defendants charged with robbery comprised nearly half (49.1%) of all defendants charged with a violent offense. Nearly one-third (32.5%) of all juvenile defendants charged with a violent offenses were charged with assault. In other words, more than eight out of every ten juvenile defendants who were charged with a violent offense were charged with either robbery or assault. The next most prevalent offenses for which juvenile defendants were charged as adults were drug sales and burglary, 11.2 percent and 8.5 percent, respectively. One out of seven juvenile defendants was charged with some sort of drug offense.

Race and Latino Ethnicity

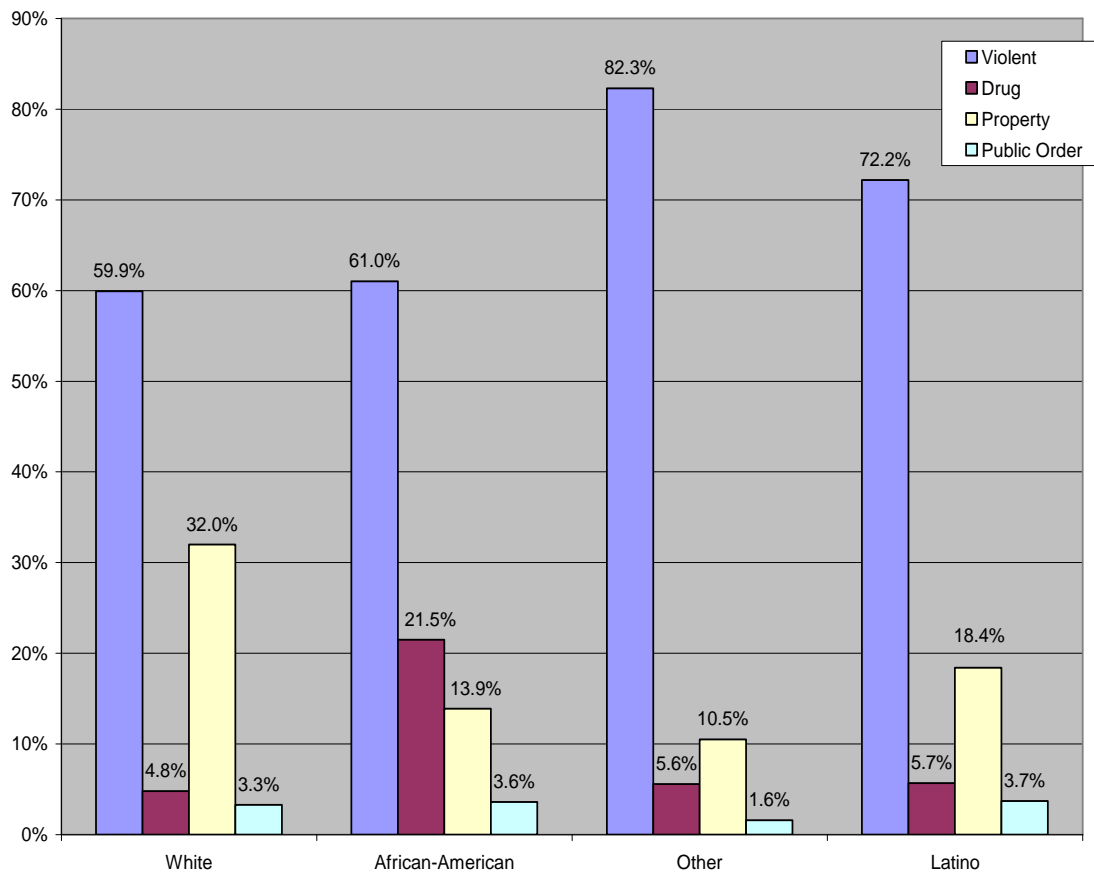
Although African-American youth accounted for 61.6 percent of all juvenile defendants in the study, they comprised nearly 87 percent (86.7%) of those charged with drug offenses. (Chart 23)

**Chart 23: Percentage of Juvenile Defendants Charged by Offense and Race and Latino Ethnicity in Criminal Courts, 1998**



On the other hand, African American juvenile defendants represented only 48.1 percent of those charged with property offenses. African American youth accounted for 59.4 percent of violent and 62.5 percent public order cases, respectively. Drug cases were filed against African-American youth at nearly five times the rate of White youth (21.5% vs. 4.8%) and nearly four times the rate of Latino youth (5.7%). 4.8%) and nearly four times the rate of Latino youth (5.7%). (Chart 24)

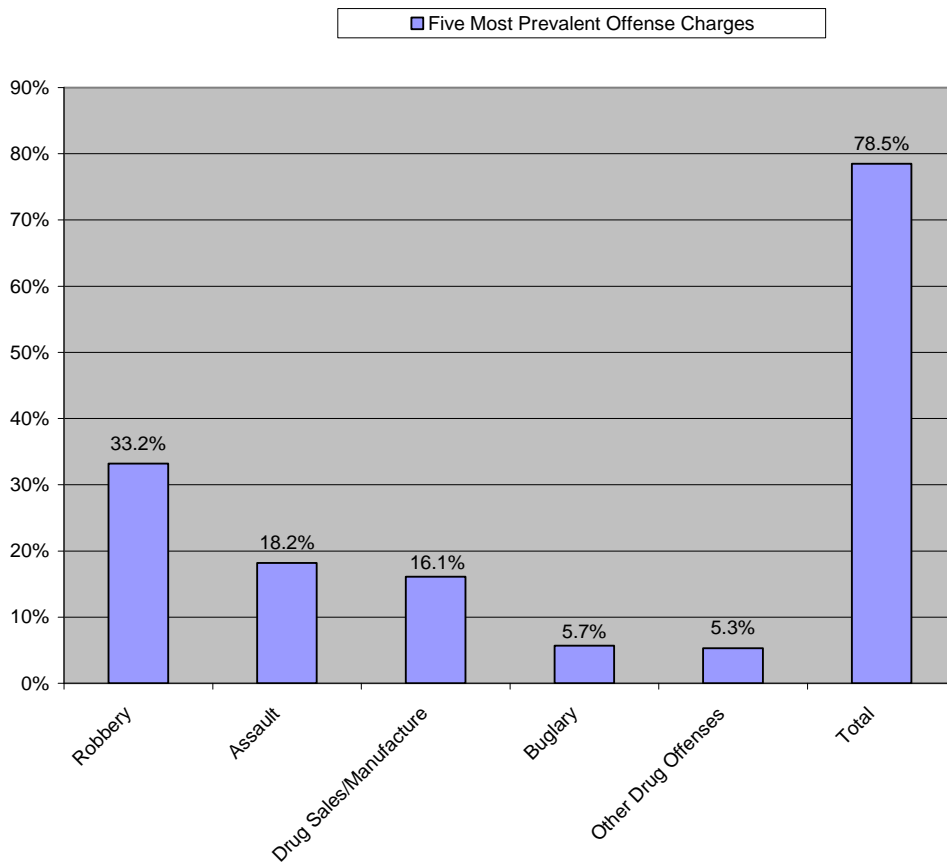
**Chart 24: Percentage of Offenses Charged Against Juvenile Defendants by Race and Latino Ethnicity in Criminal Courts, 1998**



Interestingly, there is virtually no difference in the percentage of white and African-American juvenile defendants charged with violence offenses, 59.9 percent and 61.0 percent, respectively. A much higher percentage of other minority defendants, mostly Asian, were charged with a violent offense (82.3%). (Chart 24)

An examination of the specific offenses for which the juvenile defendants are charged, reveals that robbery was the most prevalent arrest offense for both African American and Latino youth (33.2% and 32.4%, respectively). (Charts 25A and 25C) For white youth and other youth of color, the most prevalent arrest offense was assault (23.3%). (Chart 2B)

**Chart 25A: Five Most Prevalent Offenses African American Juvenile Defendants Charge in Criminal Courts, 1998**

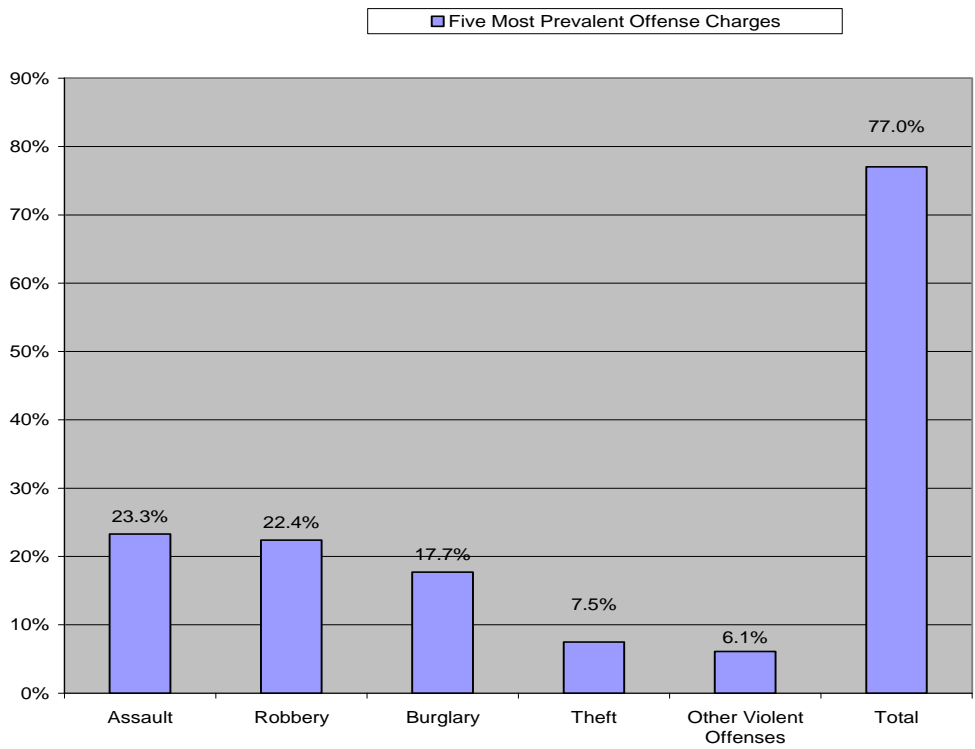


For all three groups of youth – African American, Latino, and White – the top most prevalent offenses with which they are charged constitute over three-fourths of all the charged offenses, 78.5 percent, 79.2 percent, and 77.0 percent, respectively. (Charts 2A, 2C, and 2B) Violent offenses do not make up all of the top offenses for any of the groups. The proportion that violent offenses account for is virtually the same for African American and White youth, 51.4 percent and 51.8 percent, respectively. (Chart 2A and 2B) Violent offenses make up a higher proportion of the top charged offenses for Latino youth, 65.6 percent. (Chart 2C)

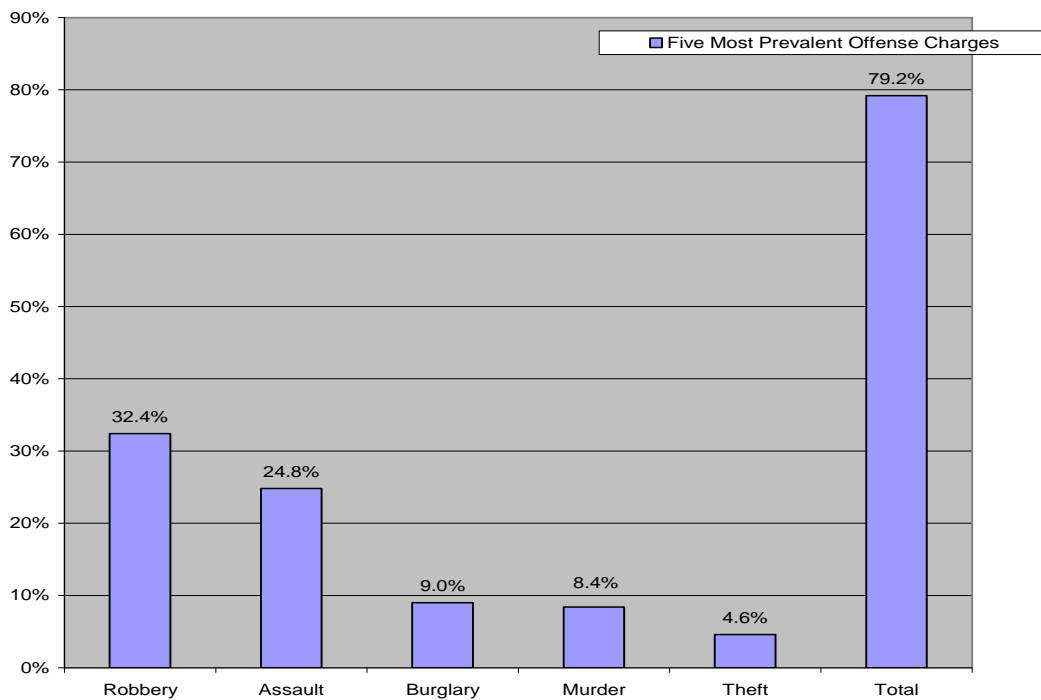
There was more variation in the third most prevalent offense category. For African American youth it was drug trafficking or sales (16.1 percent); for white youth and Latino/Hispanic youth, burglary (17.8 percent and 9 percent, respectively), and for other youth of color, murder 16.9 percent).

More than one-fifth of all the African American youth were charged with a drug offense (21.4%), and one quarter of these were charged with a drug offense that did not involve sales or manufacturing (i.e., drug possession, possession of drug paraphernalia). (Chart 2A)

**Chart 25B: Five Most Prevalent Offenses White Juvenile Defendants Charge in Criminal Courts, 1998**



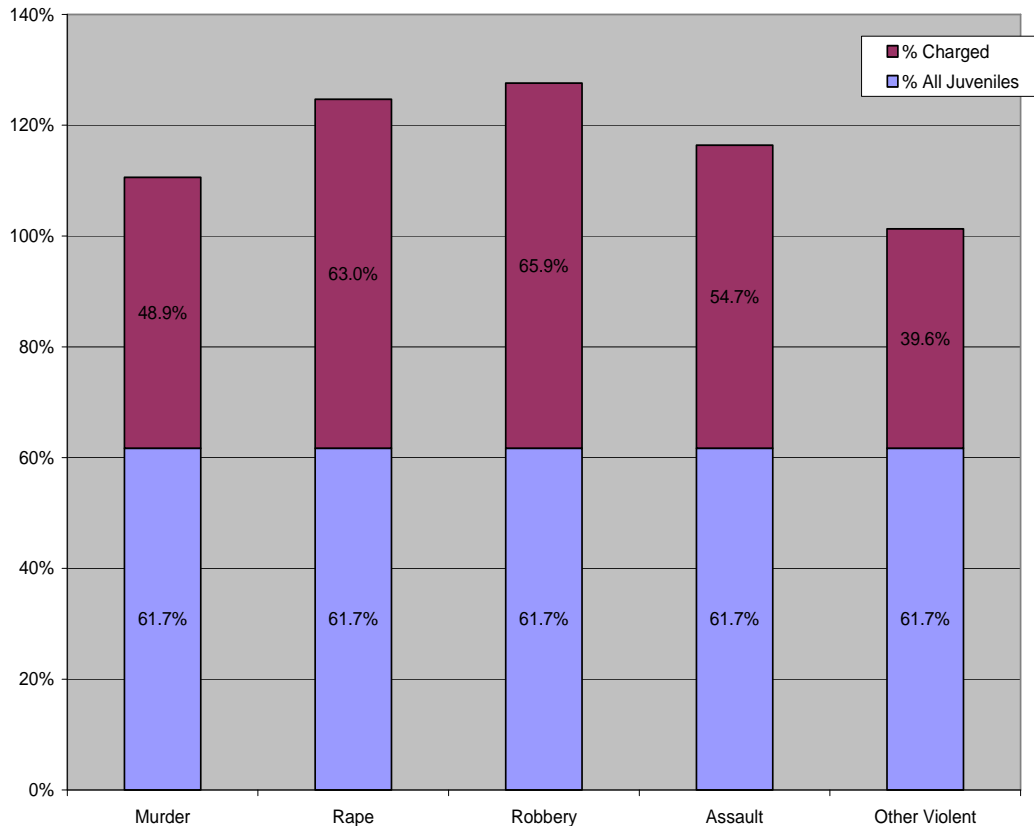
**Chart 25C: Five Most Prevalent Offenses Latino Juvenile Defendants Charge in Criminal Courts, 1998**



Burglary was one of the top five most prevalent offenses with which all of the groups were charged. (Charts 2A, 2B, and 2C) The percentage of white youth charged with burglary offenses (17.7%) was twice that of Latino youth (9.0%) and three times African American youth (5.7%). (Charts 2A, 2B, and 2C)

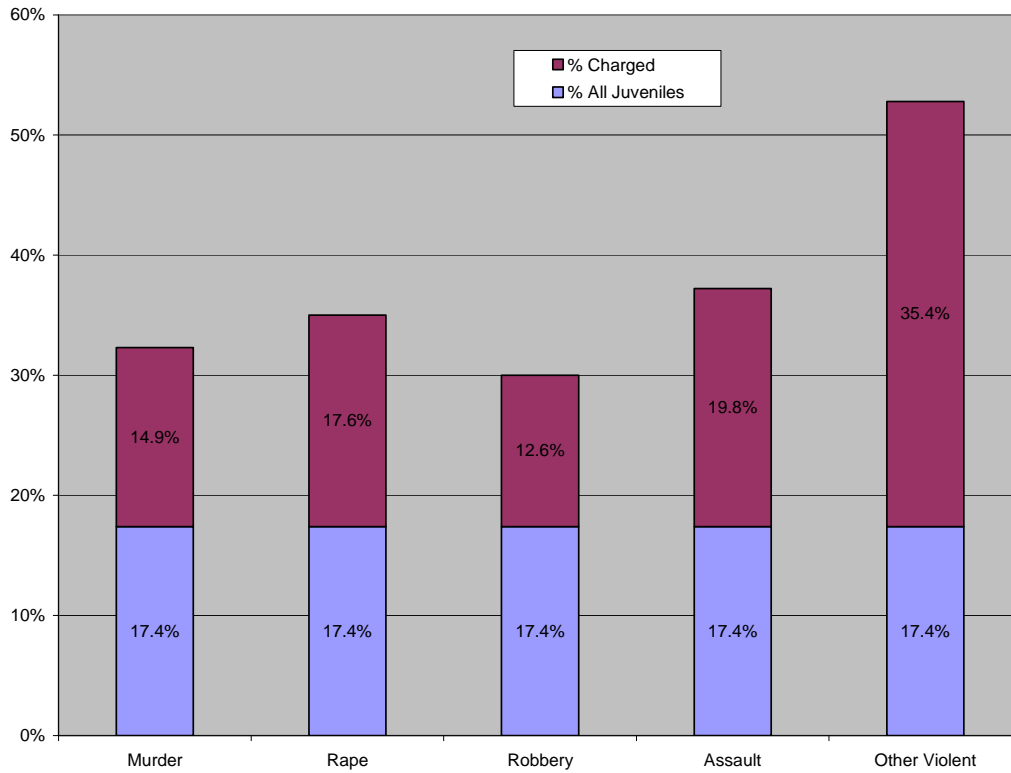
Looking at the violent offense categories in terms of the percentage that each racial and ethnic category comprises, African American juvenile defendants, who constituted 61.6 percent of all the juvenile defendants, were underrepresented in the murder, assault, and other violent categories (48.9%, 54.7% and 39.6%), but slightly over-represented in the robbery category (65.9%). (Chart 26A)

**Chart 26A: Percentage of African American Juvenile Defendants Charged with Violent Offenses in Criminal Courts, 1998**



White youth, who represented 17.1 percent of all juvenile defendants, were underrepresented in the murder and robbery categories (14.9% and 12.6%, respectively), and over twice the percentage in the category of other violent offenses (35.4%). (Chart 26B)

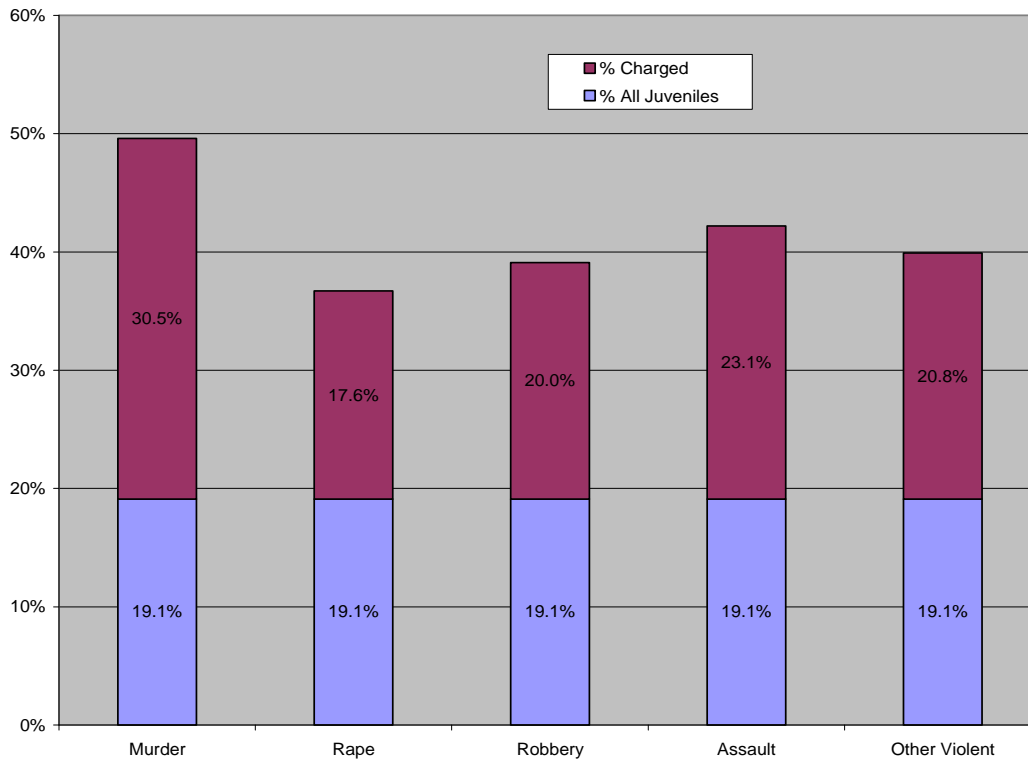
**Chart 26B: Percentage of White Juvenile Defendants Charged with Violent Offenses in Criminal Courts, 1998**



Latino youth, who represented 19.1 percent of all juvenile defendants, were overrepresented in the murder and assault categories (30.5% and 23.1%, respectively). (Chart 26C)



**Chart 26C: Percentage of Latino Juvenile Defendants Charged with Violent Offenses in Criminal Courts, 1998**



White youth were most overrepresented in burglary, forgery, and other violent offenses categories (36.5%, 36.4%, and 35.4%), with over twice as many as their representation of all juvenile defendants (17.4%). Latino youth, who represented 19.1 percent of all juvenile defendants, were most overrepresented in the driving-related violations, murder, and fraud categories (42.9%, 30.5%, and 28.6%). African American youth were most overrepresented in the drug categories, 88.9 percent in drug sales and 80.9 percent of other drug. Although representing only 1.1 percent of all the juvenile defendants, Asian youth represented 4.1 percent of all the youth charged with a murder offense and 14.3 percent of those charged with fraud. American Indian and Hawaiian or Pacific Islander youth, who represented less than one percent of all the juvenile defendants (0.4% and 0.3%, respectively), were over-represented in the other violent offenses (1.9%) and murder (1.4%), respectively. (Table 14)

**Table 14: All Charged Offenses by Race and Latino Ethnicity in Criminal Courts, 1998**

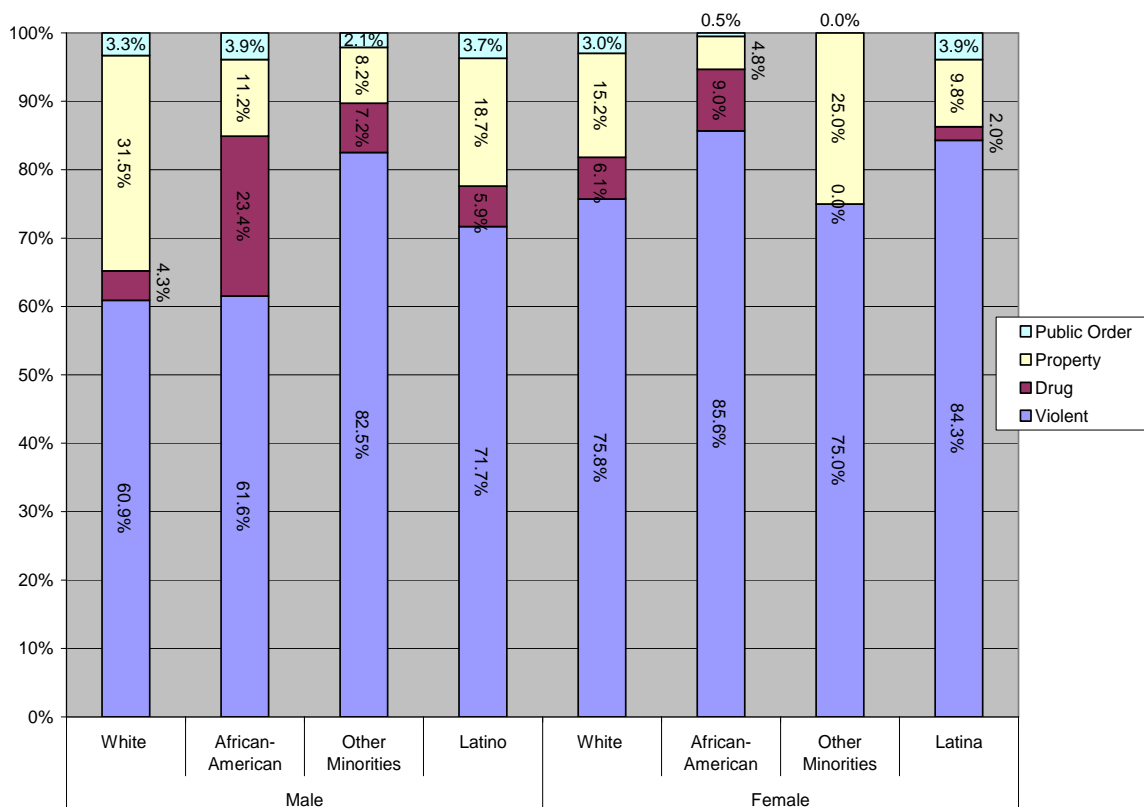
	<u>White Non- Latino</u>	<u>African American Non- Latino</u>	<u>Asian Non- Latino</u>	<u>American Indian Non- latino</u>	<u>Hawaiian PI Non- Latino</u>	<u>Latino Any Race</u>
<b><u>% of All Juvenile Defendants</u></b>	<b>17.4%</b>	<b>61.6%</b>	<b>1.1%</b>	<b>0.4%</b>	<b>0.3%</b>	<b>19.1%</b>
Murder	14.9%	48.9%	4.1%	0.3%	1.4%	30.5%
Rape	17.6%	63.0%	1.7%	0.0%	0.0%	17.6%
Robbery	12.6%	65.9%	1.2%	0.2%	0.1%	20.0%
Assault	19.8%	54.7%	1.0%	0.6%	0.8%	23.1%
Other Violent	35.4%	39.6%	2.4%	1.9%	0.0%	20.8%
Drug Sales	4.6%	88.9%	0.3%	0.1%	0.1%	6.1%
Other Drug	8.0%	80.9%	0.7%	0.3%	0.0%	10.1%
Burglary	36.5%	41.7%	0.5%	0.7%	0.3%	20.3%
Theft	28.8%	51.6%	0.0%	0.3%	0.0%	19.4%
Motor Vehicle Theft	21.0%	62.6%	0.0%	0.0%	0.0%	16.4%
Fraud	28.6%	28.6%	14.3%	0.0%	0.0%	28.6%
Forgery	36.4%	40.9%	0.0%	0.0%	0.0%	22.7%
Other Property	28.6%	46.9%	1.0%	1.0%	0.0%	22.4%
Weapons	14.8%	65.6%	1.1%	0.0%	0.0%	18.6%
Other Public Order	22.4%	55.2%	0.0%	0.0%	0.0%	22.4%
Driving-Related	14.3%	42.9%	0.0%	0.0%	0.0%	42.9%

Race, Latino Ethnicity and Gender

For each racial and ethnic group, with the exception of other youth of color,<sup>84</sup> a higher percentage of female juvenile defendants were charged with violent offenses than their male counterparts. The largest difference between the two sexes is found for African-American juvenile defendants, whereby female African American juvenile defendants were over 25 percent more likely to be charged with a violent offense than their male counterparts. (Chart 27)

<sup>84</sup> There were only four female juveniles comprising the category other minorities. Three of the four were charged with a violent offense and the fourth with a property offense.

**Chart 27: Percentage of Juvenile Defendants Charged by Offense, Gender, Race and Latino Ethnicity in Criminal Courts, 1998**



African American female juvenile defendants were one and a half times more likely to be charged with a drug offense than a white female juvenile defendant (9.0 percent compared to 6.1 percent), but two and a half times less likely than her male African American counterpart (22.1 percent). Interestingly, a higher percentage of white female juvenile defendants were charged with a drug offense than her male counterpart (6.1 percent compared to 4.3 percent). (Chart 27)

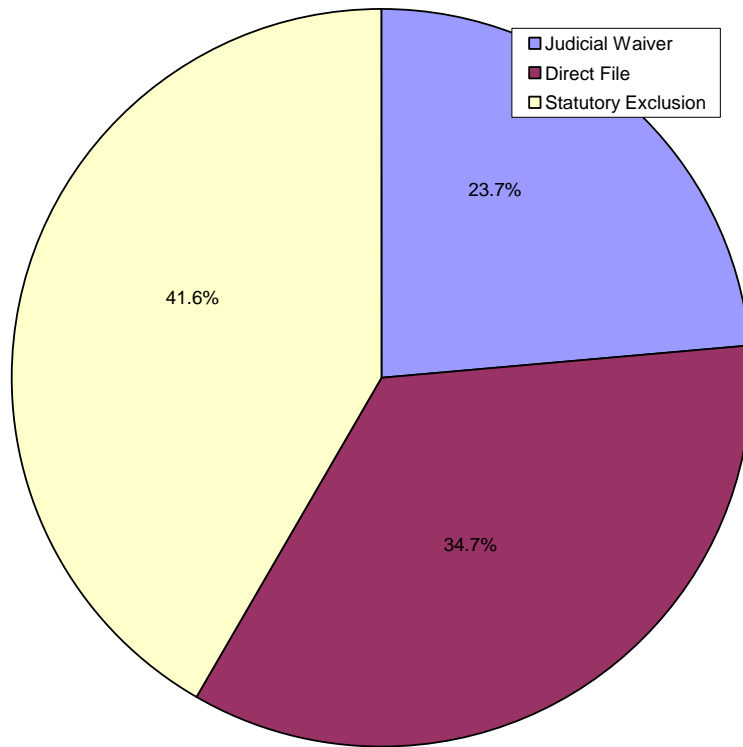
### D. Filing Mechanism<sup>85</sup>

Most of the determinations (76.3%) of whether to charge a youth as an adult were made by non-judges. (Chart 28) This was the case for a higher percentage of African-American youth, 81.1 percent of whom were charged in adult court through direct file or statutory waiver. (Chart 29) The distribution of filing mechanisms was as follows: 23.7 percent of the cases were transferred to the criminal courts by judicial waiver or certification from the juvenile courts with the remaining cases being filed without first going to the juvenile court. Nearly 42 percent (41.6%) of the cases resulted from direct filing by prosecutors. In almost 35 percent of the cases (34.7%), the charges filed by the prosecutor automatically excluded youth from juvenile court jurisdiction.<sup>86</sup> (Chart 28)

<sup>85</sup> There were 82 cases in which the filing mechanism was unknown and 62 in which race was unknown. Analyses involving filing mechanism did not include these cases.

<sup>86</sup> Although the offense charge itself determined that the juveniles were excluded from the jurisdiction of the juvenile court, the prosecutor has discretion in deciding what offenses to charge.

**Chart 28: Filing Mechanism in Criminal Courts, 1998**

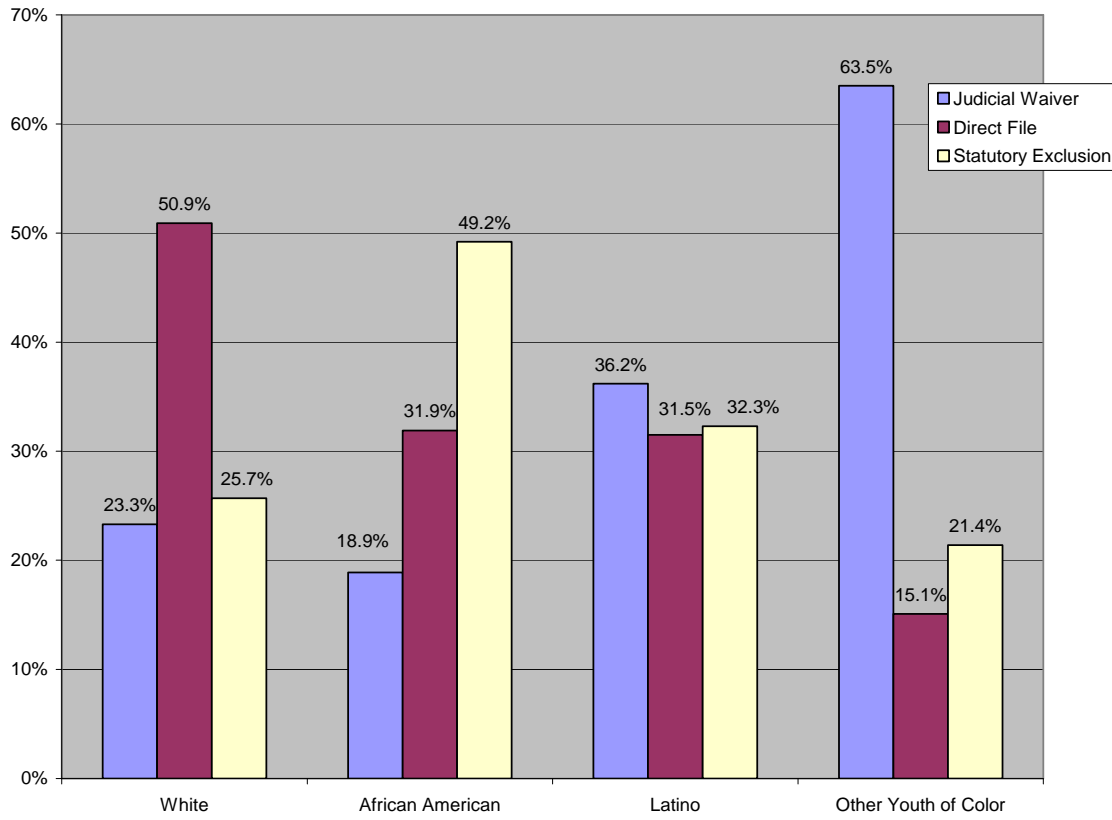


A majority of cases involving white youth were filed directly into criminal court at the discretion of the prosecutor (50.9%). Nearly half of all the cases involving African American youth (49.2%) were filed in criminal court as a result of statutory exclusion. The predominant filing mechanism for other youth of color was judicial waiver (63.5%).<sup>87</sup> Cases involving Latino youth were almost evenly distributed among the three filing mechanisms (36.2% judicial waiver, 31.5% direct file, and 32.3% statutory exclusion). (Chart 29)

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<sup>87</sup> Of the 126 other minority juvenile defendants, the filing mechanism for 80 or 63.5% was judicial waiver. As it turns out, 74 or 92.5% of judicially waived cases were in jurisdictions where judicial waiver was the only available filing mechanism.

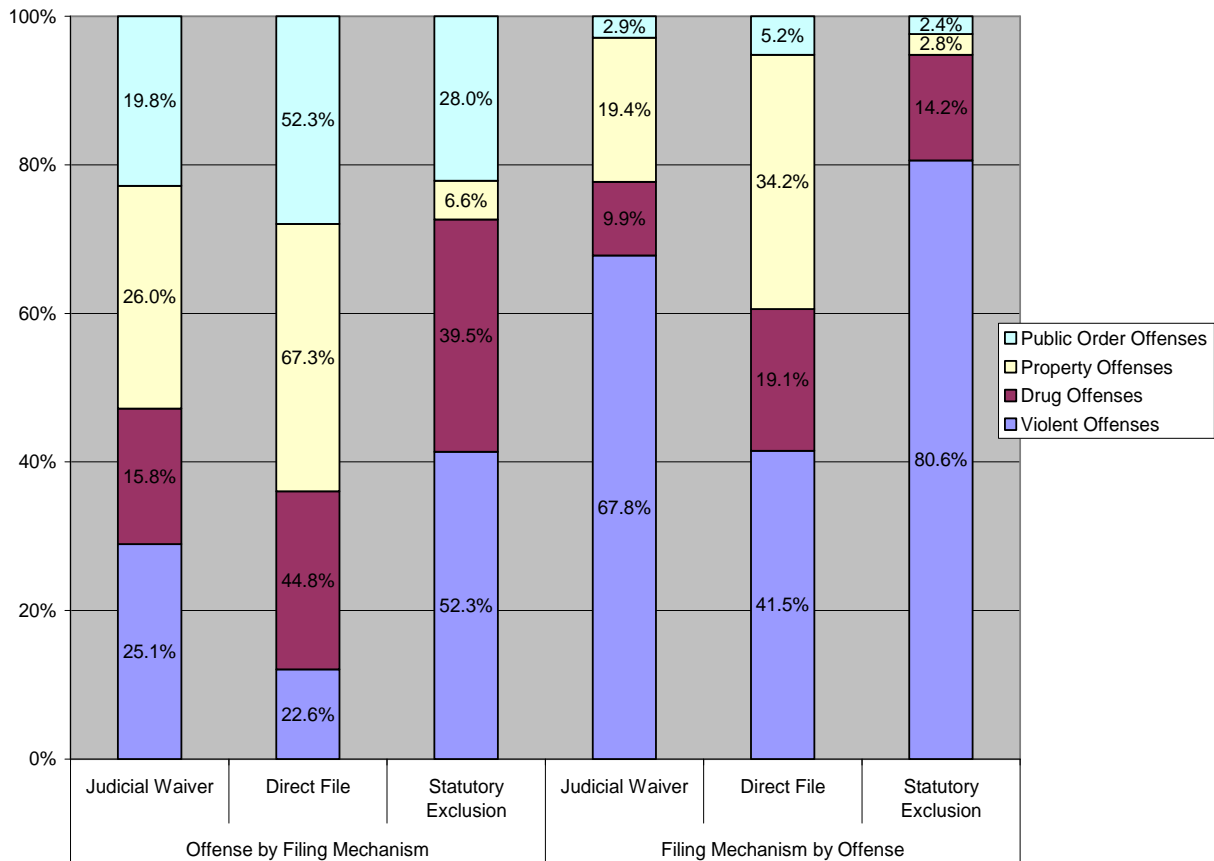
**Chart 29: Filing Mechanism by Race and Latino Ethnicity in Criminal Courts, 1998**



Examining the relationship between the types of filing mechanism and offenses charged revealed that statutory exclusion cases predominantly involved violent offenses (80.6%) compared to nearly 68 percent (67.8%) of the cases transferred to criminal courts from juvenile courts; fewer than half the cases (only 41.5%) that were filed directly in criminal courts at the discretion of prosecutors involved violent offenses. (Chart 30)

Looking at the relationship a little differently, of all the cases filed in the 40 criminal courts involving a violent offense, more than half were filed in the criminal courts by virtue of statutory exclusion (52.3%) and the other two filing mechanisms almost evenly split with 25.1 percent of the violent cases were waived and another 22.6 percent as a result of direct filing. (Chart 30)

**Chart 30: Filing Mechanism by Offense Charged in Criminal Courts, 1998**



Nearly two-thirds of all property cases were filed directly (67.3%), compared to 26.0 percent of waived cases and only 6.6 percent of cases filed in the criminal courts because of statutory exclusion. The highest percentage of both drug and public order cases were in criminal courts because of direct filing (44.8 percent and 52.3 percent, respectively). Examining specific offense categories reveals that the statutory exclusion mechanism was the most broad-sweeping, capturing over two out of three cases in only two charge categories: robbery and assault (45.4% and 22.6 percent). With the addition of a third most prevalent offense category charged as an adult, drug trafficking, these account for eight out of ten cases that were filed in criminal courts. (Table 15)

**Table 15: All Charged Offenses by Race and Latino Ethnicity in Criminal Courts, 1998**

<b>Offense</b>	<b>Judicial Waiver</b>	<b>Direct Filing</b>	<b>Statutory Exclusion</b>
Murder	10.3%	1.2%	6.0%
Rape	3.3%	0.7%	5.7%
Robbery	26.2%	18.3%	45.4%
Assault	22.2%	17.8%	22.6%
Other Violent	5.5%	3.6%	1.1%
Drug Sales	6.0%	12.7%	12.1%
Other Drug	3.8%	6.3%	1.9%
Burglary	7.3%	17.6%	1.6%
Theft	5.9%	7.6%	0.7%
Motor Vehicle Theft	2.6%	6.5%	0.2%
Fraud	0.2%	0.2%	0.0%
Forgery	0.5%	0.4%	0.0%
Other Property	2.7%	1.7%	0.3%
Weapons	1.8%	3.5%	2.3%
Other Public Order	1.0%	1.6%	0.0%
Driving-Related	0.1%	0.1%	0.0%

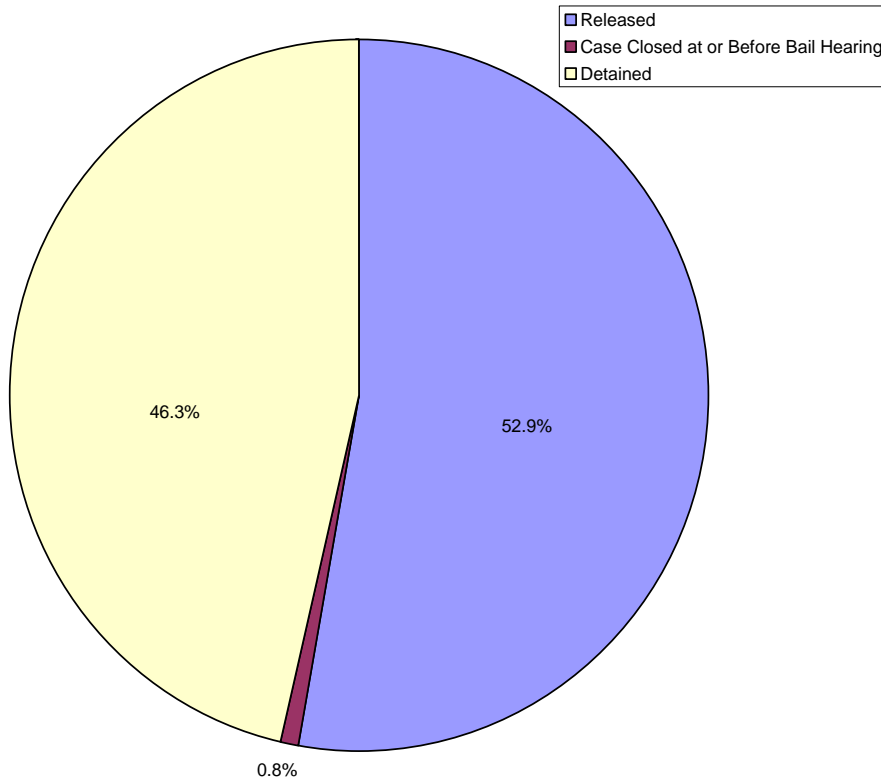
### **E. Pretrial Release and Detention<sup>88</sup>**

Overall, about 53 percent (52.9%) of all the juvenile defendants prosecuted in criminal courts were released pretrial.<sup>89</sup> The percentages vary depending on the offense. (Chart 31)

<sup>88</sup> The release category also included cases that were closed at or before the initial bail hearing in the criminal court; hence the released plus detained percentages do not necessarily add up to 100 percent. Less than one percent of the cases (56 cases) were closed at or before the bail hearing.

<sup>89</sup> A small fraction of cases were not categorized as released or detained because they were disposed of at the initial appearance in the criminal court. The juvenile defendants whose cases were closed at or before filing in the criminal court may have been detained in a holding or juvenile facility prior to the filing.

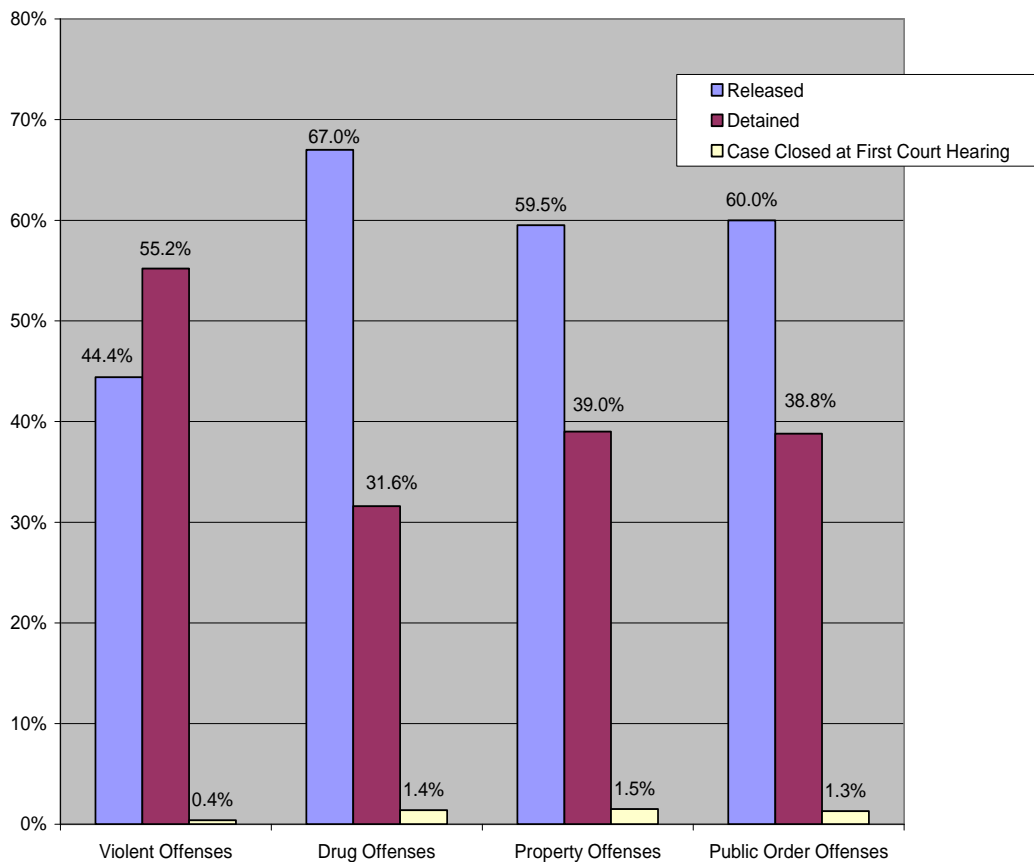
**Chart 31: Pretrial Release in Criminal Courts, 1998**



The majority of youth in the sample, with the exception of violent offenders, were released before trial. Two-thirds of those charged with drug offenses were released, compared to 60 percent of those charged with public order offenses and 59.5 percent charged with property offenses. (Chart 32)



**Chart 32: Pretrial Status of Juvenile Defendants by Offense Charge in Criminal Courts, 1998**



Over 90 percent of the youth charged with murder were detained pending disposition of their cases.<sup>90</sup> Only 44.4 percent of those charged with a violent offense were released. This figure was mostly driven by those charged with murder, with about 10 percent released. For the other violent charges, a little more than half were detained, meaning that nearly half were released pretrial. (Table 16)

This finding invites the question of how serious were the charges and/or how strong were the cases to result in a high proportion of juvenile defendants being released in cases involving violent charges. In the same 40 county criminal courts, the release rate for all felony defendants<sup>91</sup> charged with violent offenses was 54 percent, which is higher than the release rate for the juvenile defendants in this report (45%). Table 16 shows that the percent of felony defendants detained was higher than juvenile defendants in two of the five violent offense categories – rape and robbery – although in the case of rape the difference was slight.

<sup>90</sup> At the other extreme, 100 percent of those charged with fraud were released followed by 71.4 percent of those charged with driving related offenses.

<sup>91</sup> Three percent of the felony defendants were under 18 years old. Some portion of them was juveniles as defined by the upper age of juvenile court jurisdictions.

**Table 16: Offenses for Which Highest Percent of Juvenile Defendants and Felony Defendants were Detained Pretrial in Criminal Courts, 1998**

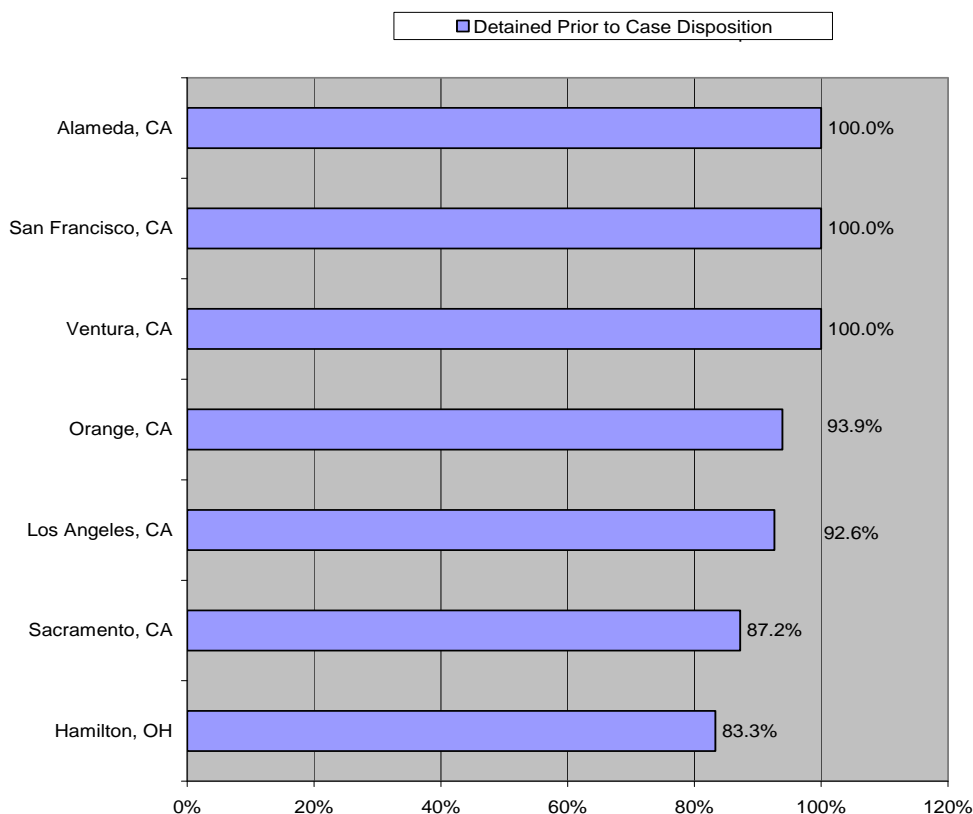
	<b><u>Juveniles Detained Prior to Case Disposition in Criminal Courts</u></b>	<b><u>Felony Defendants Detained Prior to Case Disposition in Criminal Courts<sup>92</sup></u></b>
All Violent Offenses	55.2%	46.0%
Murder	90.4%	87.0%
Rape	51.5%	53.0%
Robbery	51.2%	62.0%
Assault	52.5%	38.0%
Other Violent Offenses	55.9%	37.0%

There were differences in individual sites. While overall more juveniles were released than detained, in the majority of counties (22), a higher proportion of juveniles were detained than released. In seven sites (Alameda, Los Angeles, Orange, Sacramento, San Francisco and Ventura Counties, California and Hamilton, Ohio) over 80 percent of their juvenile defendants were detained pending trial.<sup>93</sup> (Chart 33)

<sup>92</sup> Felony defendants refer to all the felony defendants in the State Court Processing Statistics study in 1998 in the same 40 criminal courts. *Special Report*, “Felony Defendants In Large, Urban courts, 1998” (Washington, D.C.: Bureau of Justice Statistics), 2001.

<sup>93</sup> In six of the counties – all in California – judicial waiver was the only mechanism for filing cases involving juveniles in criminal court. In Hamilton County, OH over 80 percent (80.6%) of the cases filed in adult court were transferred from the juvenile court and the remaining 19.4 percent were statutory exclusion cases. Of the defendants who were detained pretrial, 14.8 percent had their cases filed in the criminal courts because of statutory exclusion whereas 69 percent of the detained cases were transferred from the juvenile court.

**Chart 33: Jurisdiction in Which 80 Percent or Higher Juvenile Defendants Detained Prior to Case Disposition in Criminal Courts, 1998**



In the six California counties the overwhelming majority, 97.7 percent,<sup>94</sup> of all the cases involved a violent offense compared to 63.9 percent of all jurisdictions.<sup>95</sup> (Chart 33)

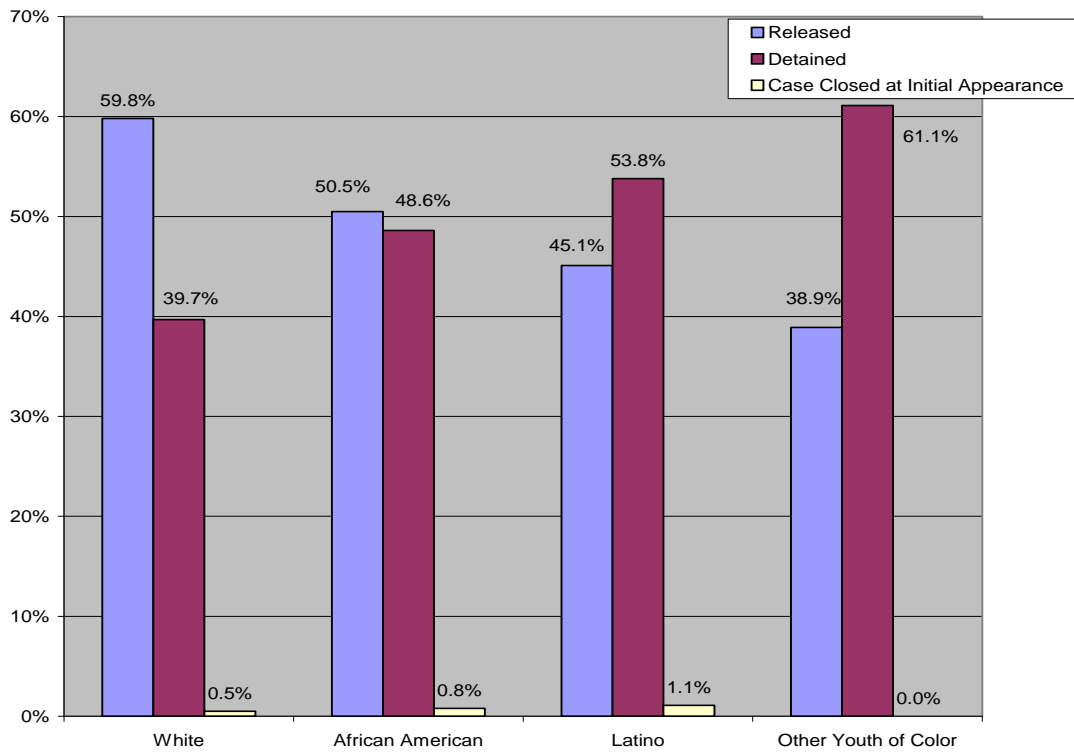
Overall, a higher percentage of White youth were released pretrial (59.8%) than any of the other racial/ethnic categories (50.5% African Americans, 45.1% Latino, and 38.9% other youth of color). (Chart 34)

Release is related to the offense with which defendants are charge. Controlling for offense, white juvenile defendants were still more likely to be released than the other groups. The most pronounced difference was in the drug offense category where 86.2 percent of white juvenile defendants were released, compared to 65.8 percent of African American youth and 68 percent of Latino youth. (Chart 35)

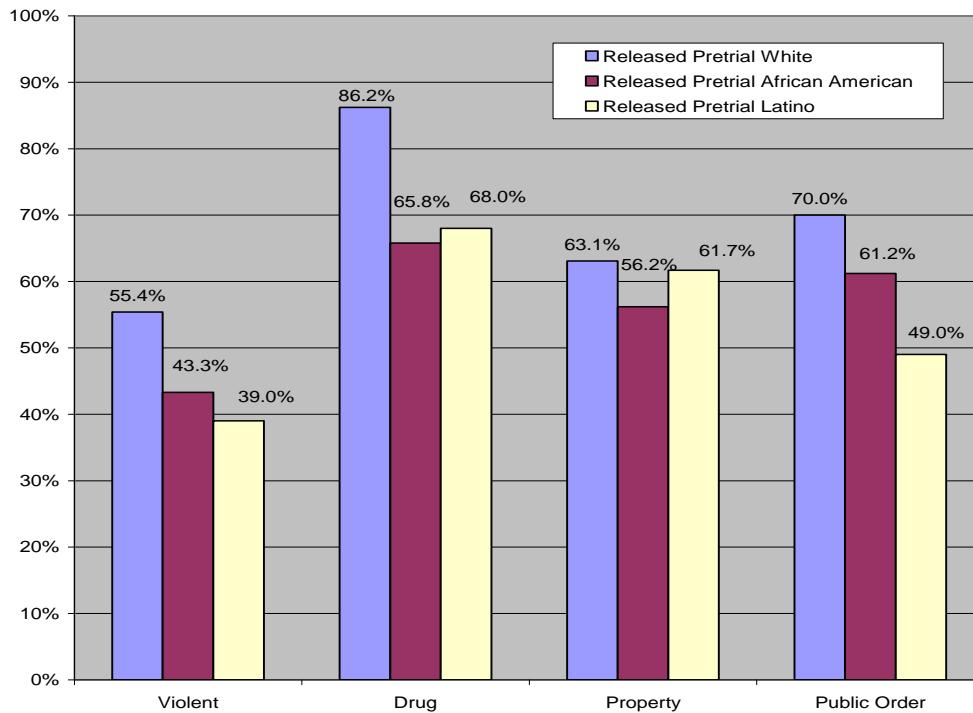
<sup>94</sup> In three counties all of the juveniles were charged with violent offenses – Alameda, San Francisco, and Ventura.

<sup>95</sup> Hamilton County, Ohio is an aberration because fewer than two-thirds (63.9%) of the juveniles were charged with violent offenses, yet more than 8 out of 10 were detained prior to case disposition.

**Chart 34: Pretrial Status by Race and Latino Ethnicity in Criminal Courts, 1998**



**Chart 35: Released Pretrial by Race and Latino Ethnicity and Offense in Criminal Courts, 1998**



For youth who were released on bail, the median bail amount was about the same for all race/ethnic categories, \$5,000 for both white and African American youth and \$5,000 for Latino youth. The only exception was the other youth of color group, which had a median bail about double that of over \$11,000. African American youth had a lower mean average of \$9,470, which was not that different from the \$10,950 of white youth or \$11,069 of Latino youth. Again the other youth of color group had significantly higher mean of over four times the highest amount of \$46,709. Because bail is offense-driven, the median and mean bail amounts posted by each of the racial and Latino ethnic groups are provided for each of the major offense categories. (Table 16)

**Table 16: Median and Mean Bail Amounts Posted by Juvenile Defendants in Criminal Courts by Offense**

	<u>African American</u>		<u>Latino/Hispanic</u>		<u>Other Non-White</u>		<u>White</u>	
	<u>Median</u>	<u>Mean</u>	<u>Median</u>	<u>Mean</u>	<u>Median</u>	<u>Mean</u>	<u>Median</u>	<u>Mean</u>
<b>Violent</b>	\$ 7,500	\$ 12,857	\$ 7,500	\$ 12,939	\$ 16,000	\$ 60,539	\$ 7,750	\$ 15,801
<b>Drug</b>	\$ 5,000	\$ 6,872	\$ 3,850	\$ 8,980	N/A	N/A	\$ 4,250	\$ 9,855
<b>Property</b>	\$ 2,500	\$ 4,959	\$ 4,000	\$ 6,220	\$ 3,940	\$ 4,595	\$ 2,000	\$ 4,070
<b>Public Order</b>	\$ 5,000	\$ 5,422	\$ 3,500	\$ 6,067	N/A	N/A	\$ 2,000	\$ 3,804

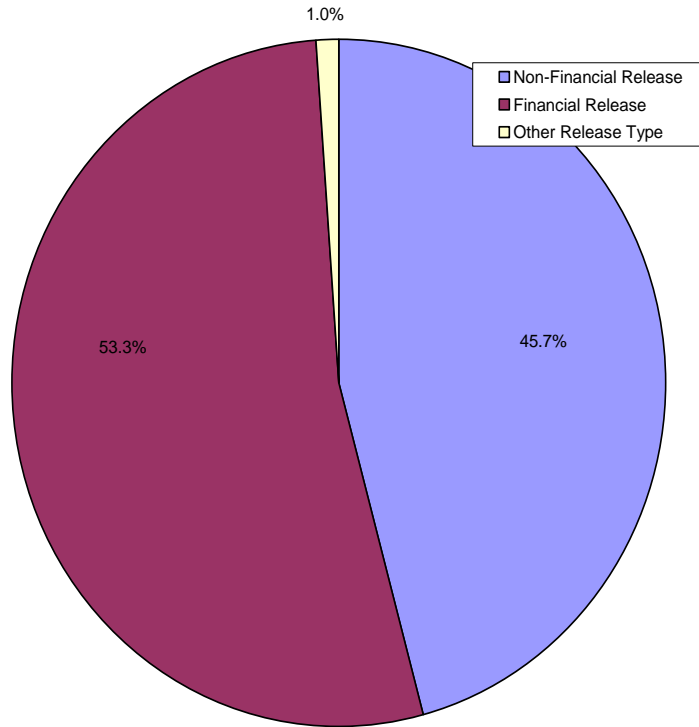
The bail amounts posted by each of the race/ethnic categories did not differ substantially across the offense categories, again, with the exception of the other youth of color, but because the numbers were so small, if only a few received a high bail, would skew the median and especially the mean of the group.<sup>96</sup>

About 46 percent (45.7%) of all juvenile defendants who were released were released exclusively on some form of non-financial release condition. (Chart 36) Non-financial conditions of release included those released on release on own recognizance, some form of supervised or conditional release, such as drug monitoring, third party custody, most often involving parents or legal guardians. The most popular type of financial condition, which included deposit bail, cash bond, and property bond, was commercial or surety bail.<sup>97</sup>

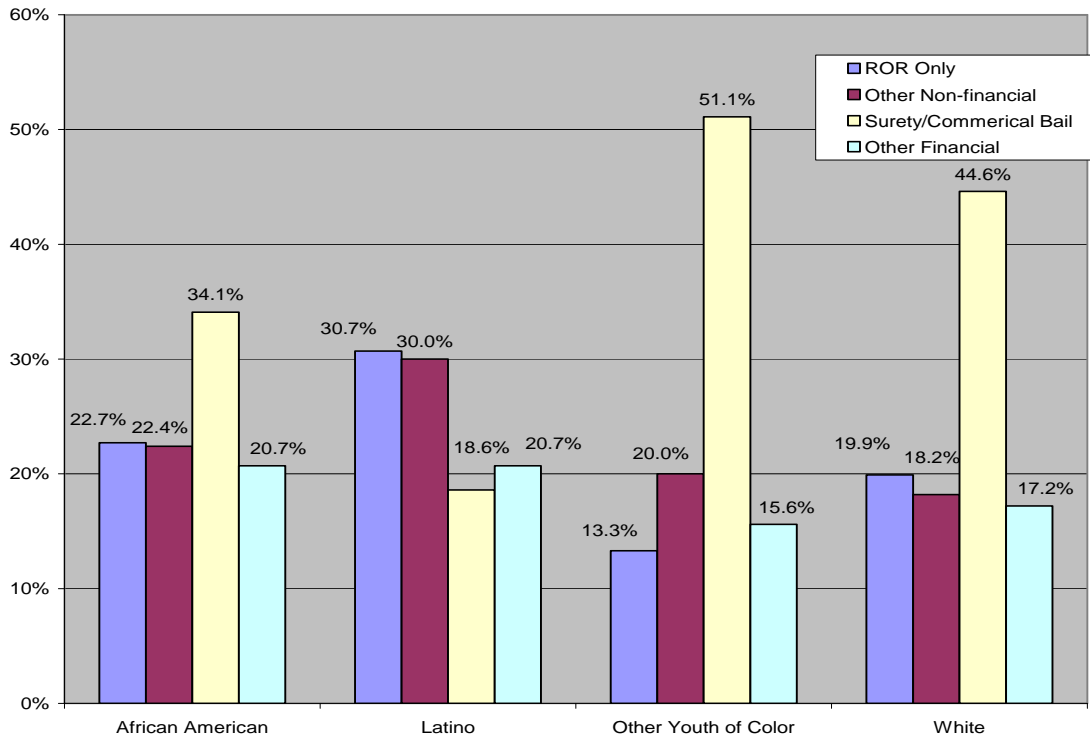
<sup>96</sup> The bail ranges for the four groups were as follows: African-American youth: \$1 - \$150,000; Latino: \$500 - \$150,000; Other: \$500 - \$300,000; and \$200 - \$160,000.

<sup>97</sup> Defendants who were released on surety bond had to pay a bail bondsman a premium, often putting up collateral, to guarantee the full amount of the bond with the court.

**Chart 36: Type of Pretrial Release in Criminal Courts, 1998**



**Chart 37: Type of Pretrial Release by Race and Latino Ethnicity in Criminal Courts, 1998**

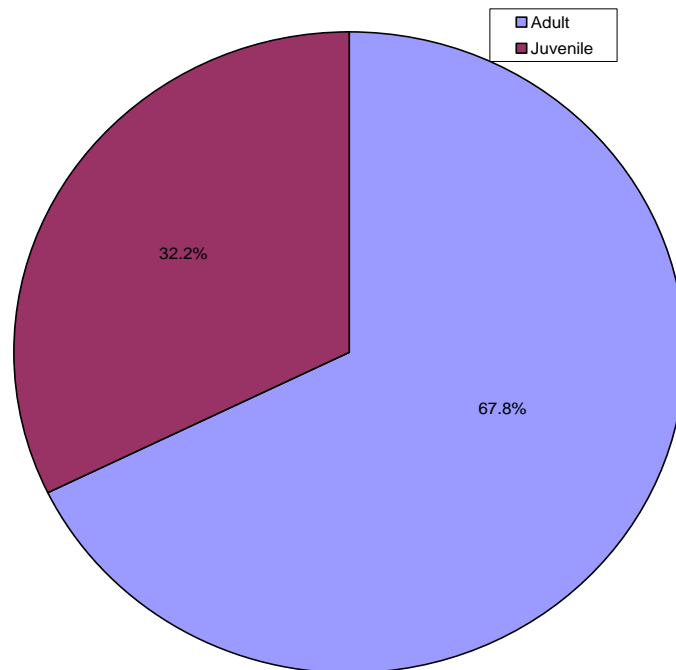


White and other minority juvenile defendants were the two groups most likely to be released on some form of financial release condition, and specifically commercial bail. Latino juvenile defendants were least likely to be released on financial conditions, but most likely to be released on their own recognizance. (Chart 37)

## F. Place of Pretrial Detention<sup>98</sup>

Two-thirds (67.8%) of the 3,127 detained juveniles in the sample were held in adult jails pending disposition of their cases. Only 50 youth were identified as having been placed in the general population rather than separated from adult inmates. (Chart 38)

**Chart 38: Facility Where Juvenile Defendants Detained Pretrial in Criminal Courts, 1998**

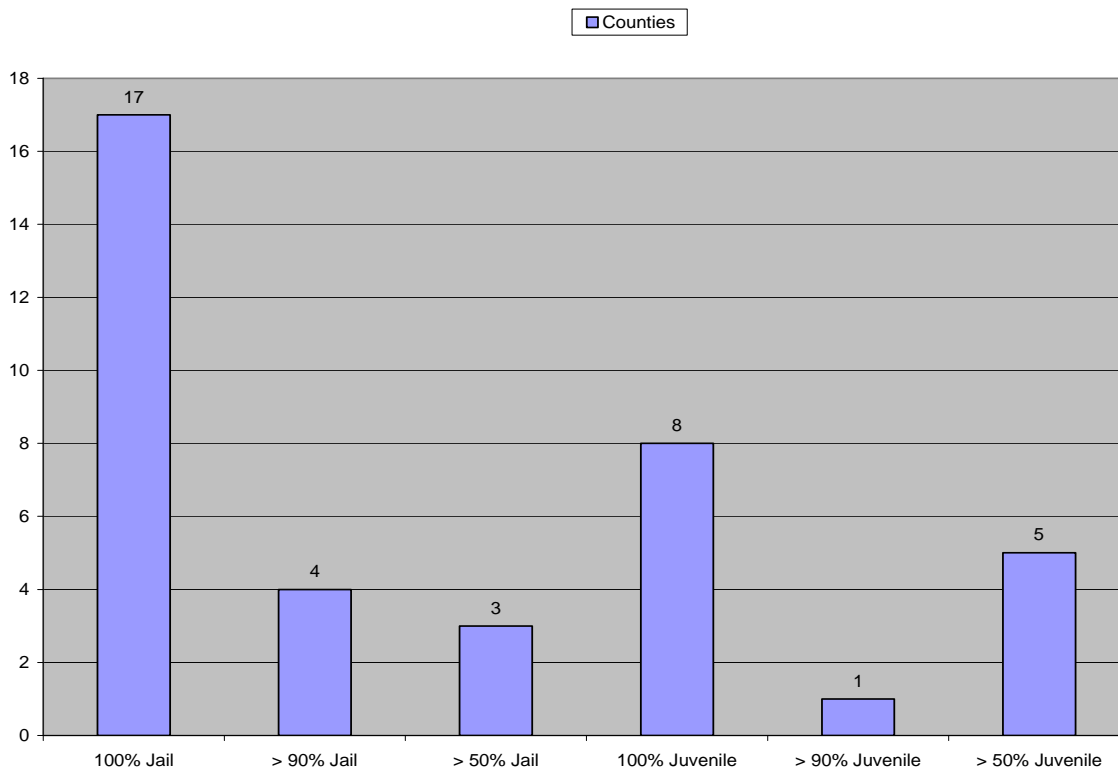


In 17 of the jurisdictions (Jefferson County, Alabama, Pima County, Arizona; Alameda County, California, Broward, Dade, Hillsborough, and Orange Counties, Florida, Honolulu County, Hawaii, Du Page County, Illinois, Marion County, Indiana; Jackson and St. Louis Counties, Missouri; Hamilton County, Ohio, Allegheny County, Pennsylvania, Shelby County, Tennessee, and Dallas and Harris Counties, Texas) all youth were held pretrial in adult jails. (Chart 39)

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<sup>98</sup> Of the 3,373 juvenile defendants who were detained pending the disposition of their cases, the type of facility where they were held was unknown for 246 youth. Analyses of facility excluded these cases.

**Chart 39: Number of Counties Where Juvenile Defendants Held in Adult Jails and Juvenile Facilities Pretrial in Criminal Courts, 1998**



In the four New York City sites, as well as San Francisco County, California, Cook County, Illinois, Jefferson County, Kentucky, and Wayne County, Michigan, all juveniles were held in juvenile detention facilities. In the remaining sites, some youth were held either in adult jails or juvenile facilities.<sup>99</sup> (Chart 39)

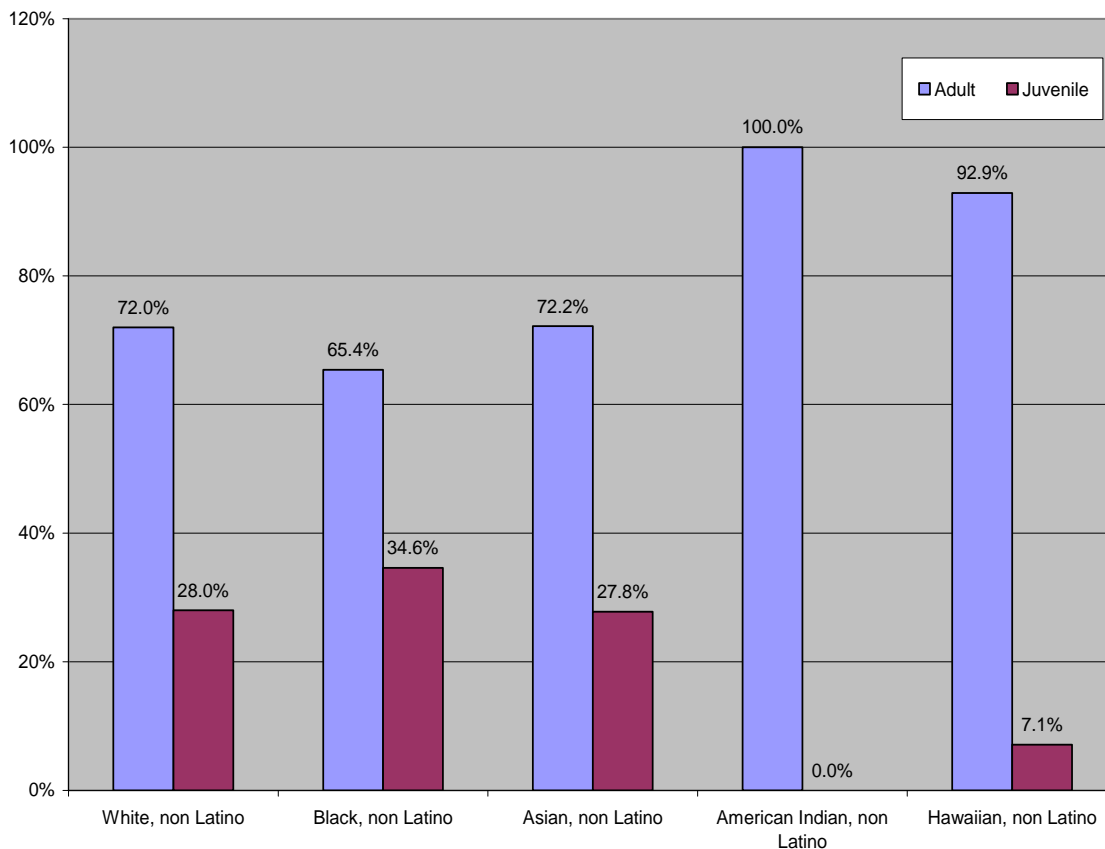
Where a juvenile defendant was detained pretrial was mostly due to the jurisdiction where the juvenile defendants were prosecuted as an adult. How that affected the various racial and Latino ethnic groups was interesting, with virtually little difference between white and Latino juvenile defendants (around 72 percent of both groups were detained in an adult facility). On the other hand, all American Indian youth were held in adult jails and nearly 93 percent of the Hawaiian or Pacific Islander youth.<sup>100</sup> (Chart 40)

<sup>99</sup> In some jurisdictions, juveniles are held in juvenile facilities until they turn 18 at which point they are transferred to an adult facility.

<sup>100</sup> This may be due to the lack of juvenile facilities in the jurisdictions where these youth are held as adults.



**Chart 40: Detention Facility By Race and Latino Ethnicity in Criminal Courts, 1998**



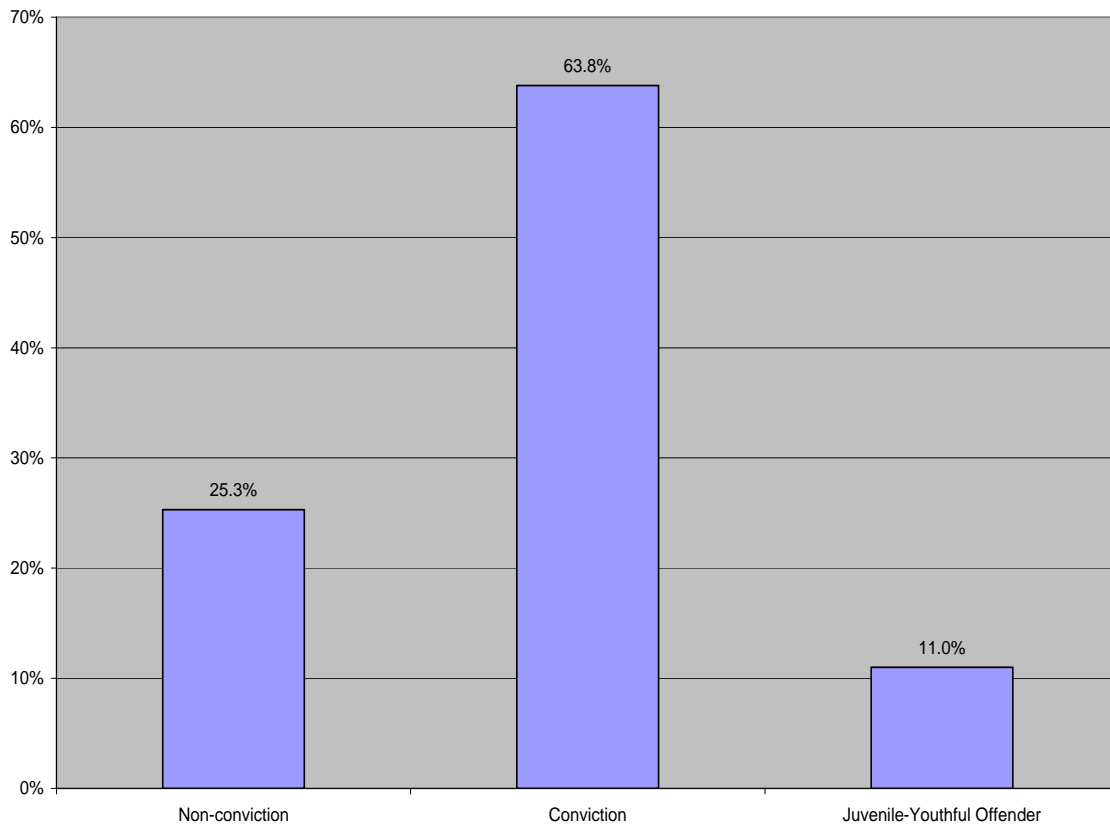
## G. Results of Prosecution<sup>101</sup>

While it is not surprising that a majority of cases ended in a conviction<sup>102</sup> as an adult offender, over one-third of the cases resulted in either a non-conviction (one out of every four defendants) or a juvenile or youthful offender disposition (more than one out of ten defendants). (Chart 41)

<sup>101</sup> Cases that were pending at the end of the study period accounted for 7.9 percent of all disposition (N=564); the disposition in another 3 cases was unknown, another 2 cases were transferred to another jurisdiction or agency, and in 3 cases the juveniles were sent to a state mental institution. These cases were excluded from the analyses involving case dispositions.

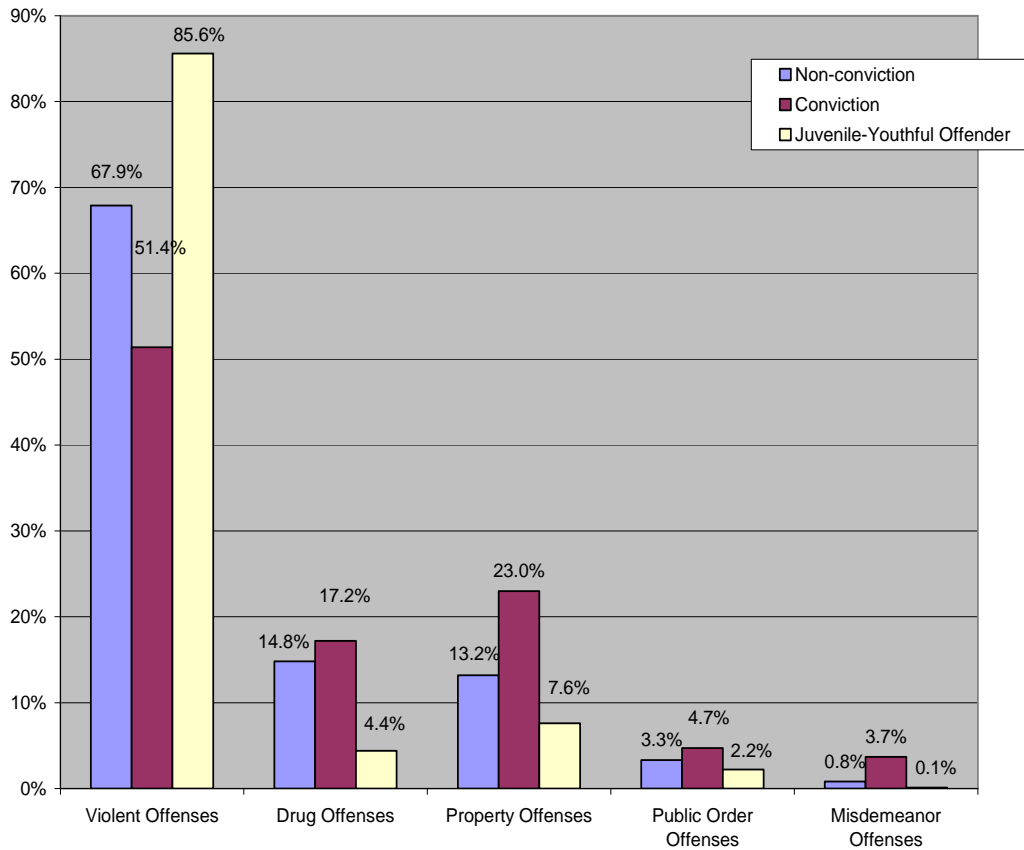
<sup>102</sup> Studies of case processing have consistently found that an overwhelming proportion of cases prosecuted result in conviction. See "Felony Defendants in Large Urban Courts 1990-2004, *Bureau of Justice Statistics Reports* (Washington, D.C.: Department of Justice), 1992-2006.

**Chart 41: Final Disposition (Excluding Pending) in Criminal Courts, 1998**



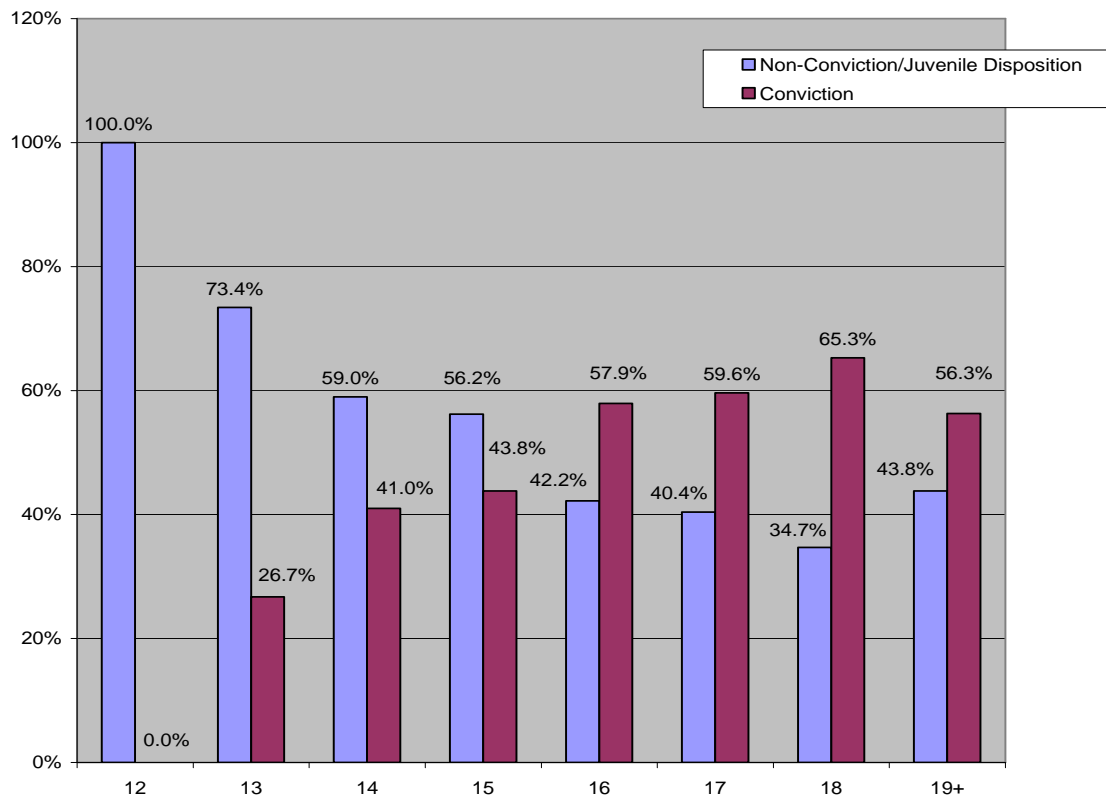
Examining the final dispositions across offense categories, it is not surprising that a majority of the convictions were for violent offenses (51.4%) compared to 17.2 percent for drug offenses, 23.0 percent for property offenses, 4.7 percent for public order offenses and 3.7 percent for misdemeanor offenses. What may be surprising is that a much higher proportion of cases that resulted in either transfer to juvenile court or disposition as a juvenile delinquent or youthful offender in the criminal courts were for violent offenses (85.6%). (Chart 42)

**Chart 42: Final Disposition by Offense in Criminal Courts, 1998**



It would be interesting to examine if the violent offenders whose cases were disposed without a conviction in the criminal court were a younger group than those who were convicted. As Chart 43 shows, with the exception of defendants who were older than 19, there is a linear relationship between age and disposition. The younger juvenile defendants were more likely to have a disposition of a transfer to juvenile court or adjudication as a juvenile, or dismissed. Nearly three-fourths of the cases involving juveniles who were 13 at the time the case was filed in criminal court ended in either a dismissal or adjudication as a juvenile. In comparison, about 40 percent of the cases involving 17 year olds experienced a similar disposition. (Chart 43)

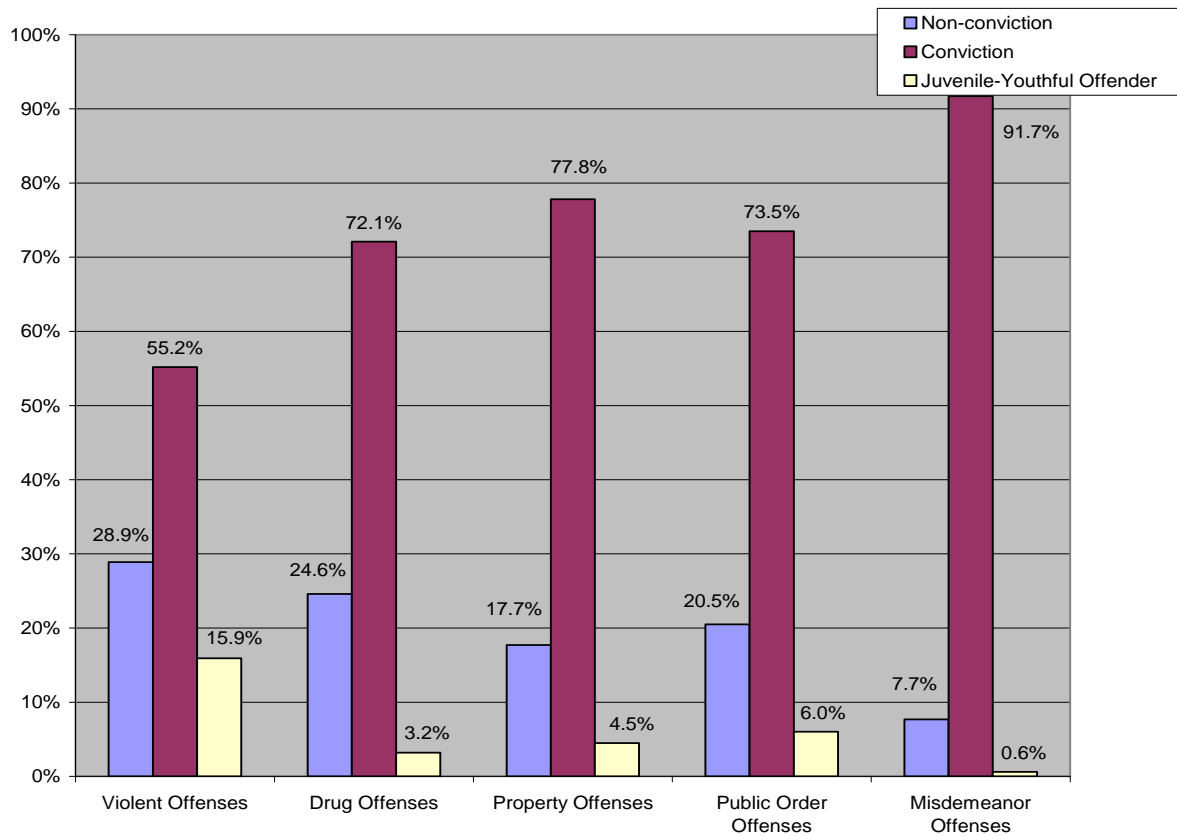
**Chart 43: Final Disposition for Violent Offenses by Age in Criminal Courts, 1998**



It is important to examine the final disposition for specific adjudication offenses because, ostensibly, the transfer laws are intended to punish juvenile defendants as adults for the most serious offenses. Interestingly, the ratio between those convicted and not-convicted as adults (including those defendants who were not convicted and those who were convicted as juveniles), was highest for those juvenile defendants whose adjudicated charge was a misdemeanor (91.7% versus 8.3%) and lowest for violent offenses (55.2% versus 44.8%). For the other types of adjudicated offenses – drug offenses, property offenses, and public order offenses – over 70 percent resulted in a conviction in criminal court. (Chart 44)

The highest percentage of juvenile defendants who were either transferred to juvenile court or adjudicated delinquent or youthful offenders in criminal courts was for those adjudicated of violent offenses (15.9%). This constituted over two and a half times the percentage of juvenile defendants adjudicated for public order offenses, three and a half times the percentage of property offenses, nearly five times the percentage of drug offenses and 26 and a half times the percentage of misdemeanor offenses. (Chart 44)

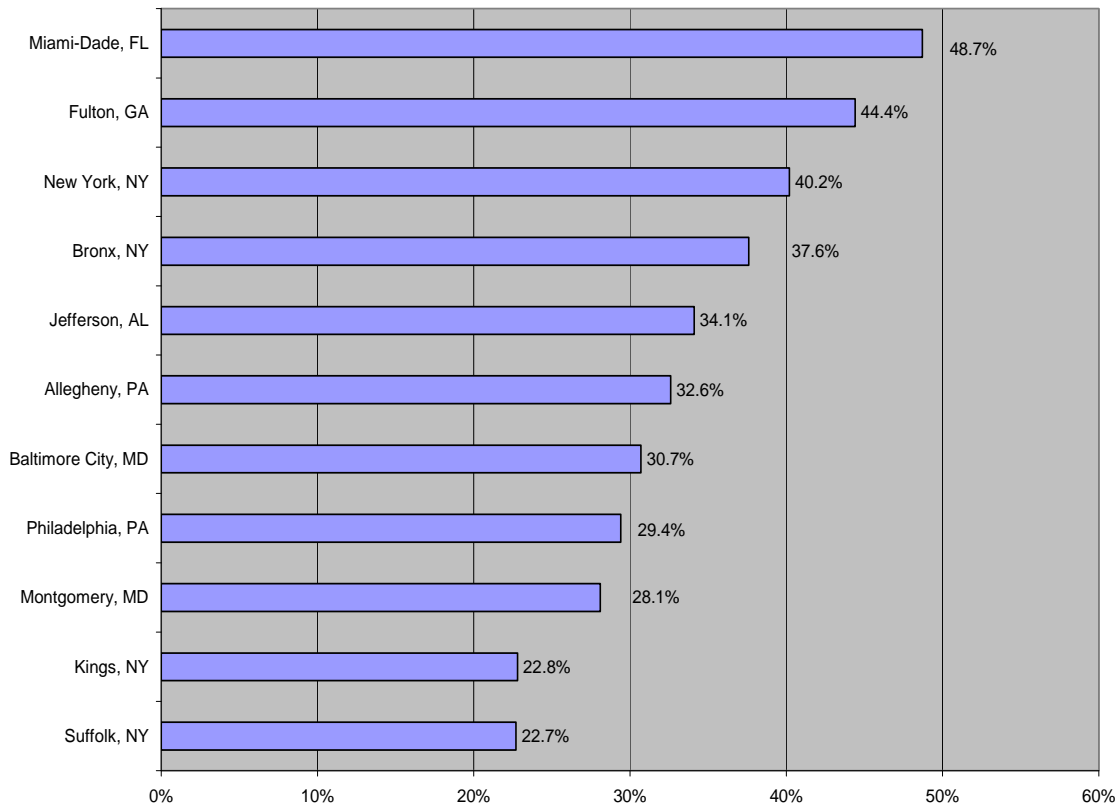
**Chart 44: Adjudicated Offense by Final Disposition in Criminal Courts, 1998**



In over one-fourth of the counties (11 of the 40 jurisdictions) in the study, less than half of the youth were convicted, ranging from a low of 22.7 percent and 22.8 percent in Suffolk County and Kings County, New York to a high of 48.7 in Miami-Dade County, Florida. With the exception of Miami-Dade, Florida, where the majority of cases of juvenile defendants were filed in criminal court as a result of prosecutorial direct filing, the other ten jurisdictions with less than half of the cases resulting in a conviction most cases<sup>103</sup> were filed because of statutory exclusion laws. (Chart 45)

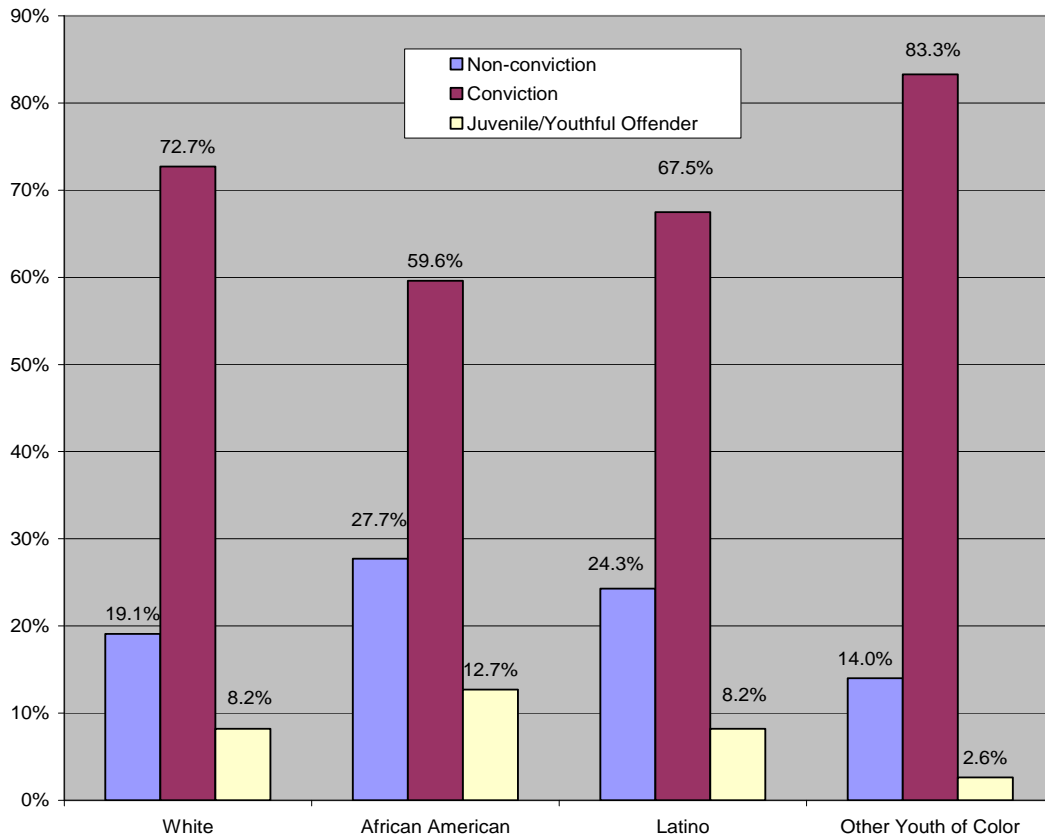
<sup>103</sup> For the four New York counties – Bronx, Kings, New York and Suffolk – all of the cases in the study were there because of statutory exclusion.

**Chart 45: Jurisdictions in Which Less Than Half of Cases Had a Conviction as Final Disposition in Criminal Courts, 1998**



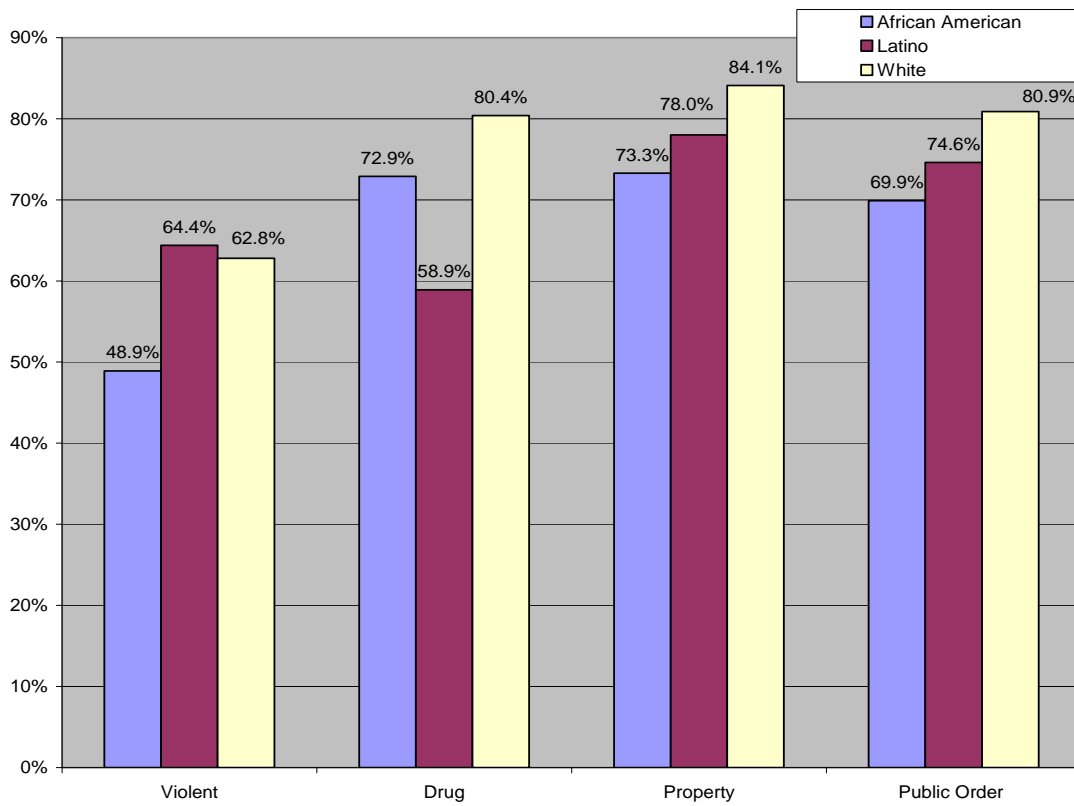
Overall, substantial numbers of youth were not convicted, and significantly fewer African-American youth were convicted than other youth. Over 40 percent of African-American youth were not convicted, as were 32.5 percent of Latino youth and 27.3 percent of white youth. African-American were much more likely to have their cases transferred back to juvenile court. The rate for such transfer back for African-American youth was higher than for white or Latino youth (12.7% vs. 8.2%). (Chart 46)

**Chart 46: Final Disposition by Race and Latino Ethnicity in Criminal Courts, 1998**



Less than half of African-American (48.9%) juvenile defendants were convicted of a violent offense in adult court; this compared to 62.8 percent of white and 64.4 percent of Latino juvenile defendants. In fact, in all offense categories, white juvenile defendants had the highest rate of conviction. (Chart 47)

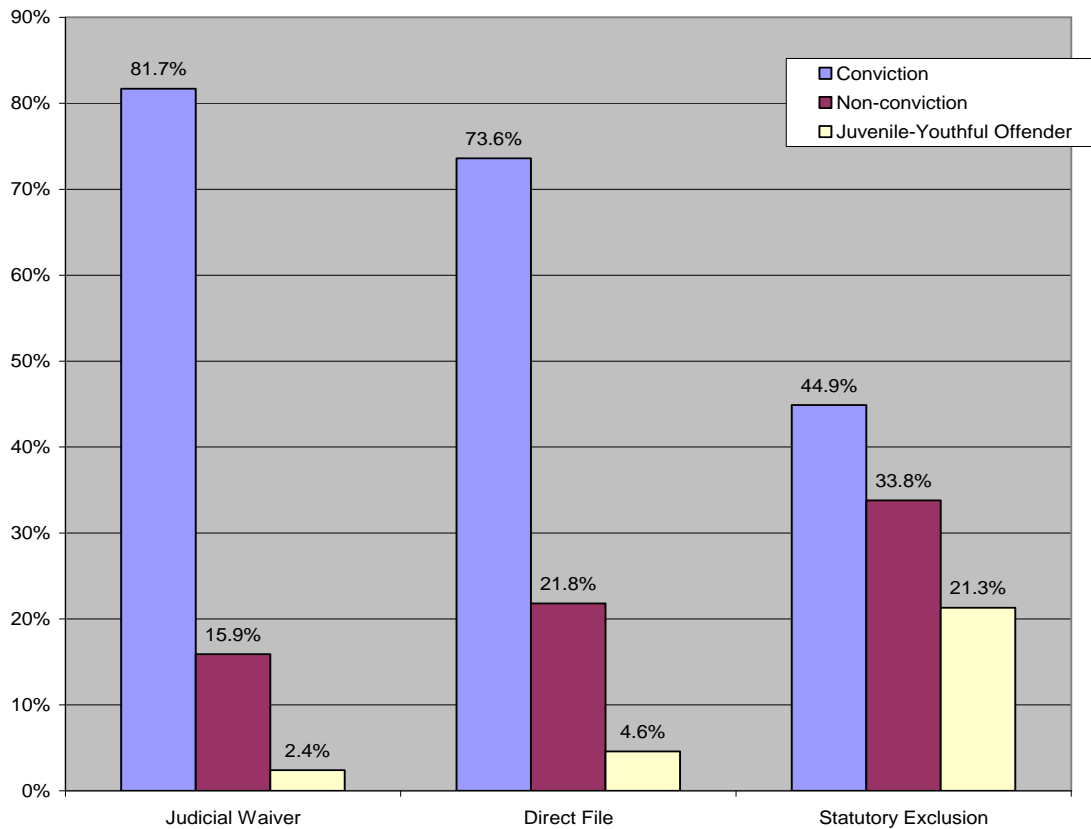
**Chart 47: Conviction Offense by Race and Latino Ethnicity in Criminal Courts, 1998**



Fewer than half (44.9%) statutory cases that were filed in criminal courts resulted in a conviction. One out of three statutory exclusion cases (33.8%) resulted in a non-conviction and more than one out of five (21.3%) resulted in either transfer to juvenile court or disposition as a delinquent or youthful offender but not an adult. In comparison, more than eight out of ten cases that were waived from juvenile court to criminal court resulted in a conviction (81.7%). Cases that were waived into criminal court were nine times less likely than those that were filed because of statutory exclusion to result in a juvenile outcome of some kind. Cases that were directly filed in criminal court fell somewhere in between the two other types of filing mechanism in terms of the percentage that resulted in a conviction (73.6%), non-conviction (21.8%), or juvenile outcome (4.6%). (Chart 48)



**Chart 48: Final Disposition by Race and Latino Ethnicity and Offense in Criminal Courts, 1998**



Statutory cases are filed without regard to age, and therefore it should not be surprising that prosecutors faced with a very young defendant may find it difficult to either seek or win a conviction in the criminal court. Therefore, the results were examined by age.

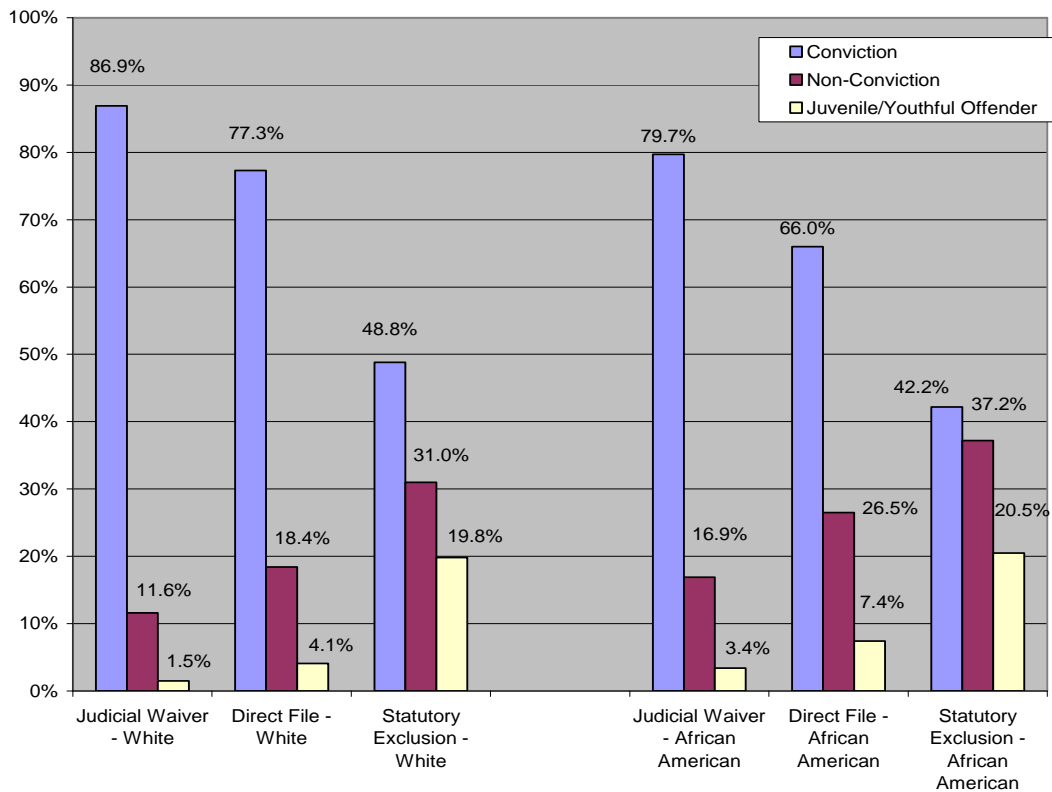
**Table 17: Disposition in Criminal Courts by Filing Mechanism and Age**

Age	Judicial Waiver		Direct File		Statutory Exclusion	
	Non-Conviction/ Juvenile Disposition	Conviction n	Non-Conviction/ Juvenile Disposition	Conviction n	Non-Conviction/ Juvenile Disposition	Conviction
12	N/A	N/A	N/A	N/A	100.0%	0.0%
13	33.3%	66.7%	100.0%	0.0%	75.0%	25.0%
14	11.1%	88.9%	47.3%	52.7%	63.7%	36.3%
15	24.2%	75.8%	36.3%	63.7%	59.5%	40.5%
16	21.7%	78.3%	29.2%	70.8%	50.2%	49.8%
17	15.9%	84.1%	28.7%	71.3%	55.7%	44.3%
18	20.0%	80.0%	15.9%	84.1%	61.1%	38.9%
19+	35.0%	65.0%	16.7%	83.3%	33.3%	66.7%

Juvenile defendants whose cases were transferred to criminal court from juvenile court (judicial waiver) have higher rates of conviction in all age categories, with exception of defendants who are 18 or older.<sup>104</sup> As table 17 shows, no pre-teen juvenile whose cases were filed by statutory exclusion resulted in a conviction. Two-thirds of 13 year-old defendants whose cases were transferred to criminal court were convicted compared to 25 percent of the statutory exclusion cases.

For each category of filing mechanism lower percentages of African American youth than white youth were convicted. While nearly half of the white juvenile defendants (48.8%) whose cases were in criminal courts because of statutory exclusion resulted in a conviction, only 42.2% of cases involving African American juvenile defendants resulted in a conviction. A higher percentage of white juvenile defendants than African American juvenile defendants were convicted in cases that were either transferred from juvenile court (86.9% versus 79.7%) or filed directly as a result of prosecutorial discretion (77.3% as opposed to 66.0%). (Chart 49)

**Chart 49: Final Disposition by Filing Mechanism For African American and White Juvenile Defendants in Criminal Courts, 1998**

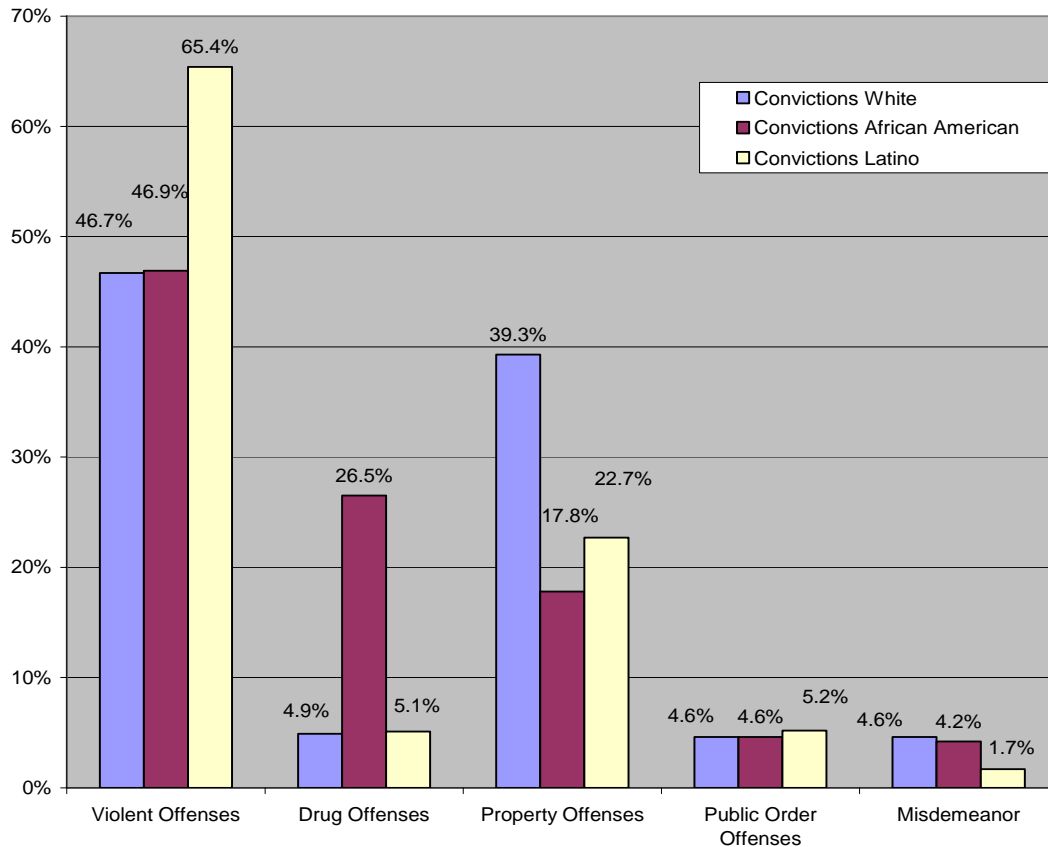


A higher percentage of Latino juveniles were convicted of violent offenses than either white or African American juveniles (65.4% compared to 46.7% and 46.9%, respectively). The differences in the conviction rates were nowhere more pronounced than for drug offenses. African American juvenile defendants were five times more likely to be convicted of a drug offense than either white or Latino juvenile defendants (26.5% compared to 4.9% and 5.1%, respectively). White juvenile defendants were more likely than African American (twice as likely) or Latino juvenile defendants to be convicted of property offenses (39.3% as opposed to 17.8% and 22.7%, respectively). There is virtually no difference among the race and ethnicity categories as far as convictions for public order offenses. Latino juvenile

<sup>104</sup> For purposes of establishing juvenile court jurisdiction, age is determined at the time the offense occurred and not when the case was filed. The dynamics involving persons who are no longer chronologically juveniles differ from those involving youth.

defendants were about two and a half times less likely than either white or African American juvenile defendants to be convicted of a misdemeanor offense (1.7% versus 4.6% and 4.2%, respectively). (Chart 50)

**Chart 50: Percentage of Convictions by Offense and Race and Latino Ethnicity in Criminal Courts, 1998**

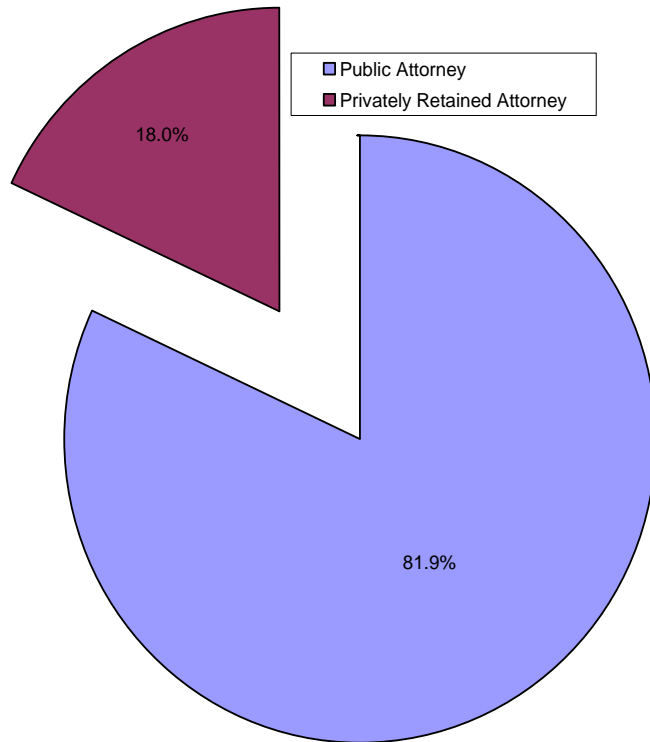


Of youth not convicted of their original charges, White youth were more likely than youth of color to have their charges reduced to a misdemeanor (4.6% of White youth vs. 4.2% of African-American youth and 1.7% Latino youth). While this seems to indicate that very little plea bargaining must have occurred, this may not necessarily have been the case given the percentages of cases that did not result in a conviction, regardless of offense, in the criminal court. Of those defendants whose conviction was reduced to a misdemeanor the original charge was a violent offense in more than half the cases (53.3%); followed by property offenses (23.1%), drug (14.2%), and public order offenses (9.6%).

## H. Attorney

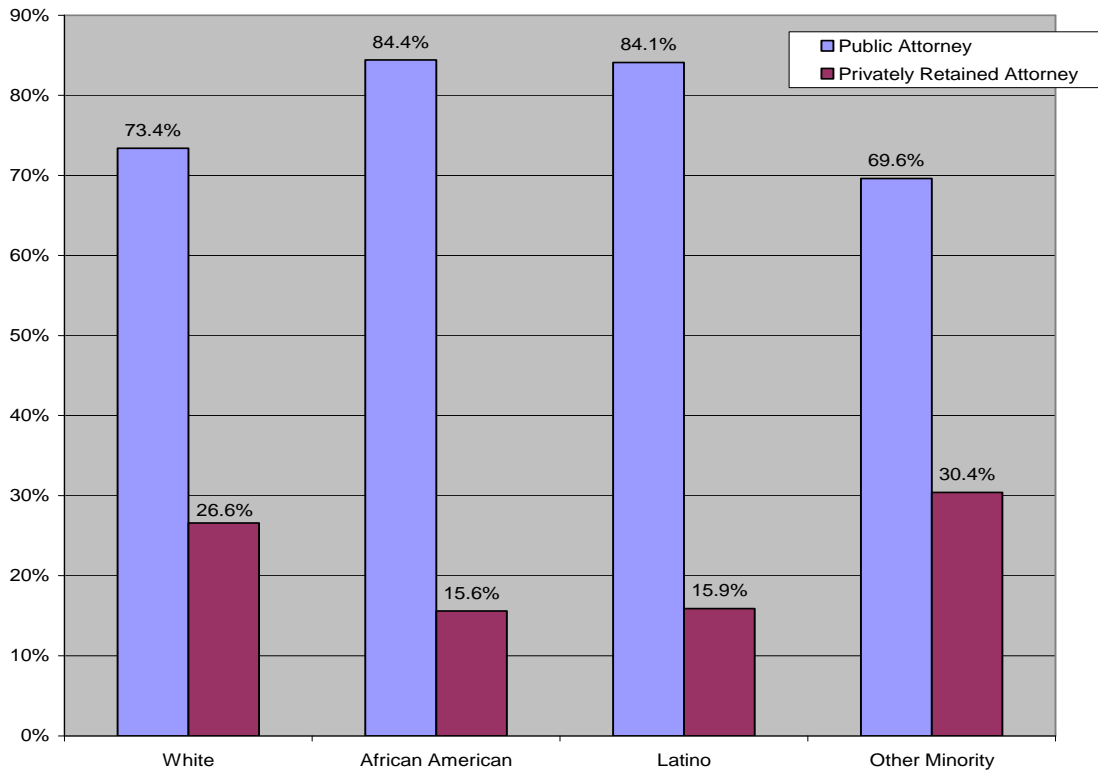
Three fifths of all the juvenile defendants were represented at their adjudication by a public attorney, either a public defender or court assigned counsel. When excluding those cases for which the type of attorney at adjudication was not known and those few cases where there was no attorney, the percentage of cases that had a public rather than a private attorney rose to over 80 percent (81.9%). (Chart 51)

**Chart 51: Type of Attorney in Criminal Courts, 1998**



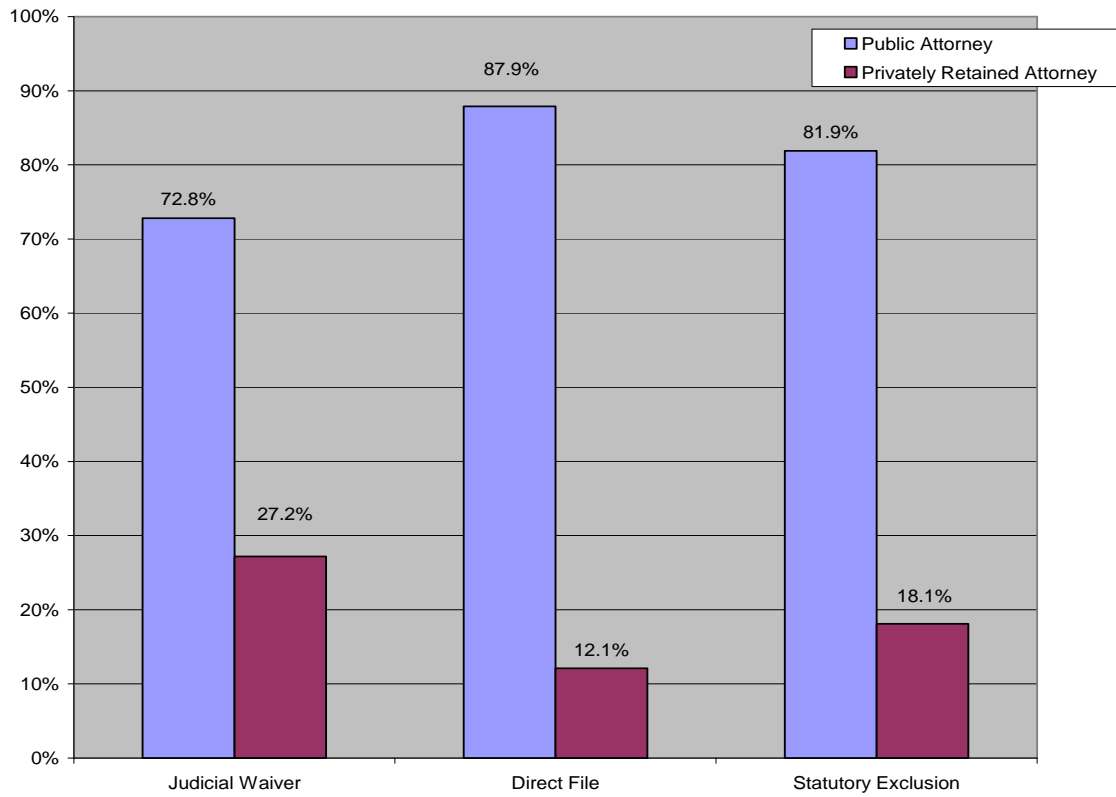
The highest percentage of youth who had retained private counsel were other youth of color, 30.4 percent compared to the next highest 26.6 percent of white youth. Less than 16 percent of both African American and Latino youth were represented by private attorneys, 15.6 percent and 15.9 percent, respectively. (Chart 52)

**Chart 52: Type of Attorney by Race and Latino Ethnicity in Criminal Courts, 1998**



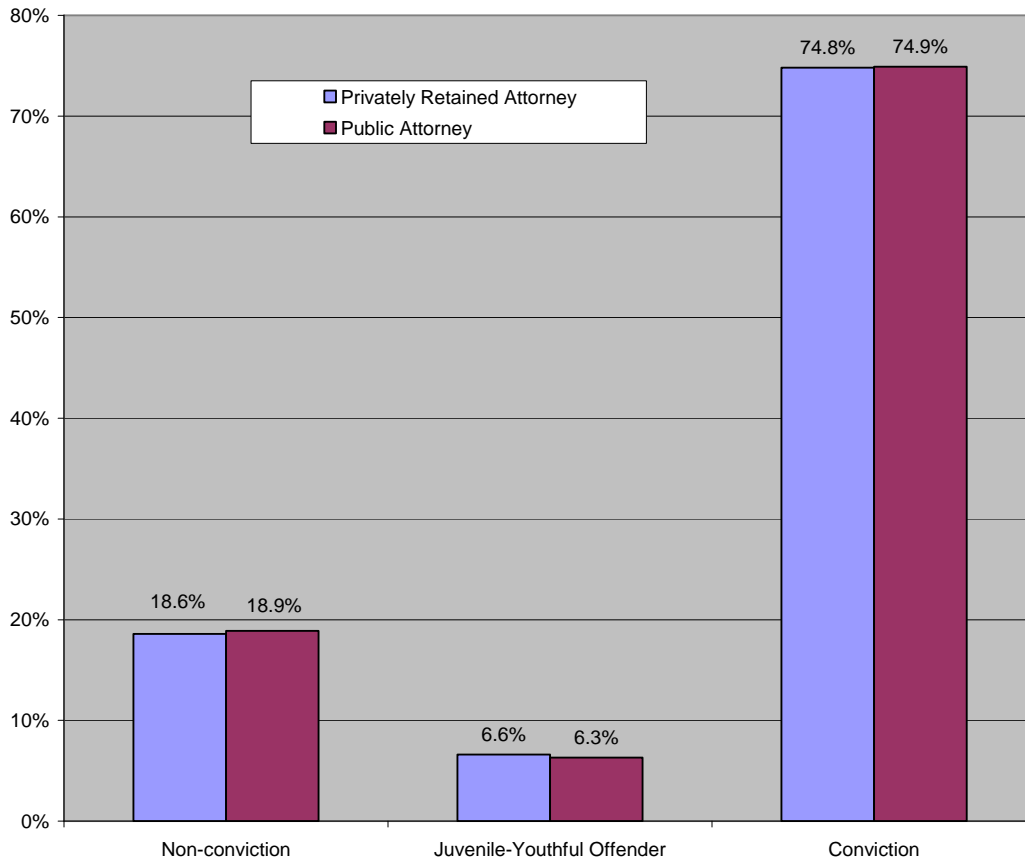
Regardless of the filing mechanism the vast majority of juvenile defendants were represented by a public funded attorney. However, the lowest percentage of juvenile defendants with a public-funded attorney were the judicially waiver cases (72.8%). In comparison, nearly 88 percent (87.9%) of youth whose cases were direct filed into the criminal courts has a public funded legal representative and nearly 82 percent (81.9%) of statutory exclusion cases. (Chart 53)

**Chart 53: Type of Attorney by Filing Mechanism in Criminal Courts, 1998**



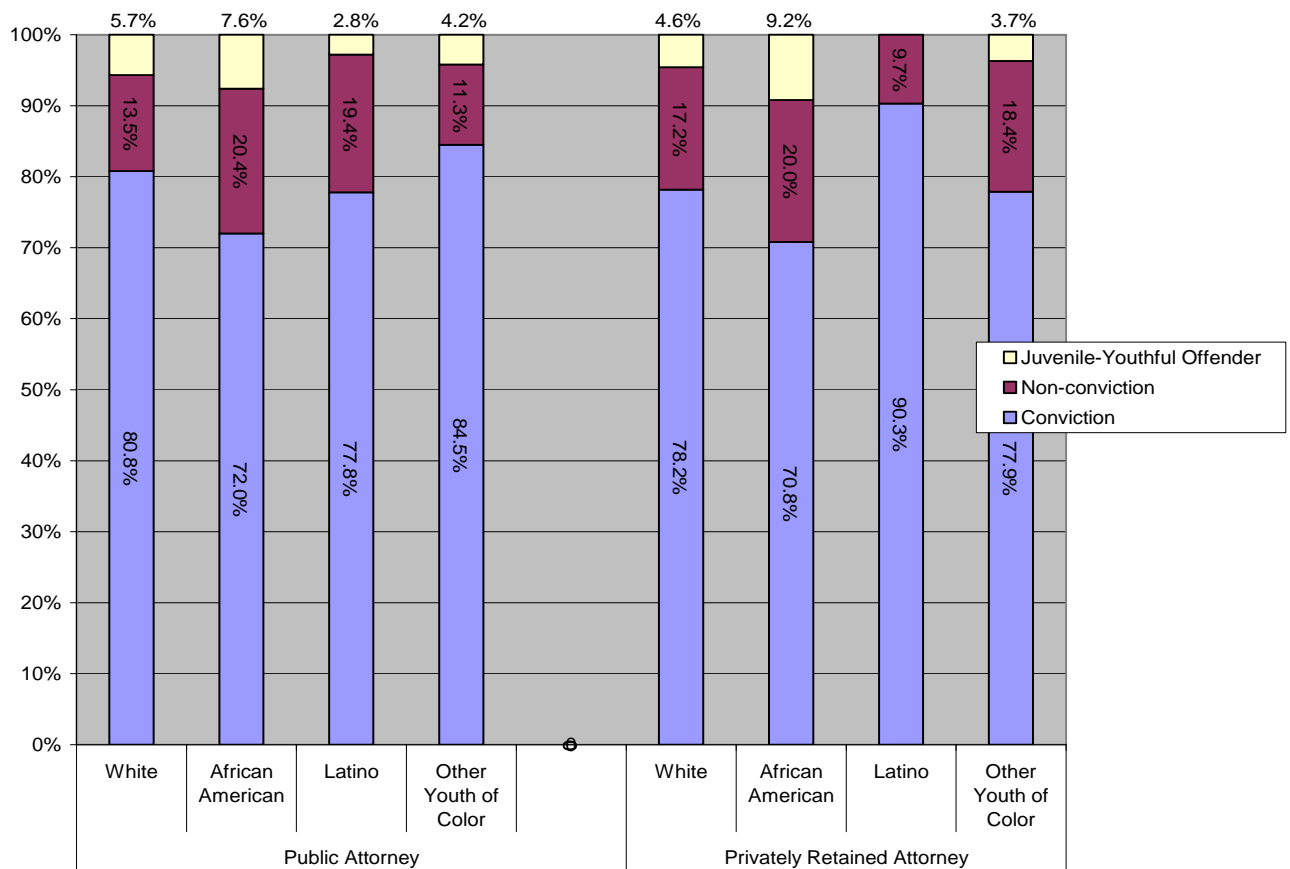
Overall, there was virtually no difference in the type of disposition and the type of attorney at adjudication. (Chart 54)

**Chart 54: Type of Attorney by Final Disposition in Criminal Courts, 1998**



Looking specifically at race and ethnicity, white and African American youth were slightly less likely to be convicted when represented by a private attorney than a publicly funded attorney, but Latino youth were more likely to be convicted. African American youth represented by private counsel were more likely any other category of race and ethnicity to have a juvenile disposition, twice as likely as their white counterparts (9.2% compared to 4.6%). In fact, white youth did better with a public attorney (5.7%). (Chart 55)

**Chart 55: Type of Attorney by Filing Mechanism and Race and Latino Ethnicity in Criminal Courts, 1998**



## I. Sentences

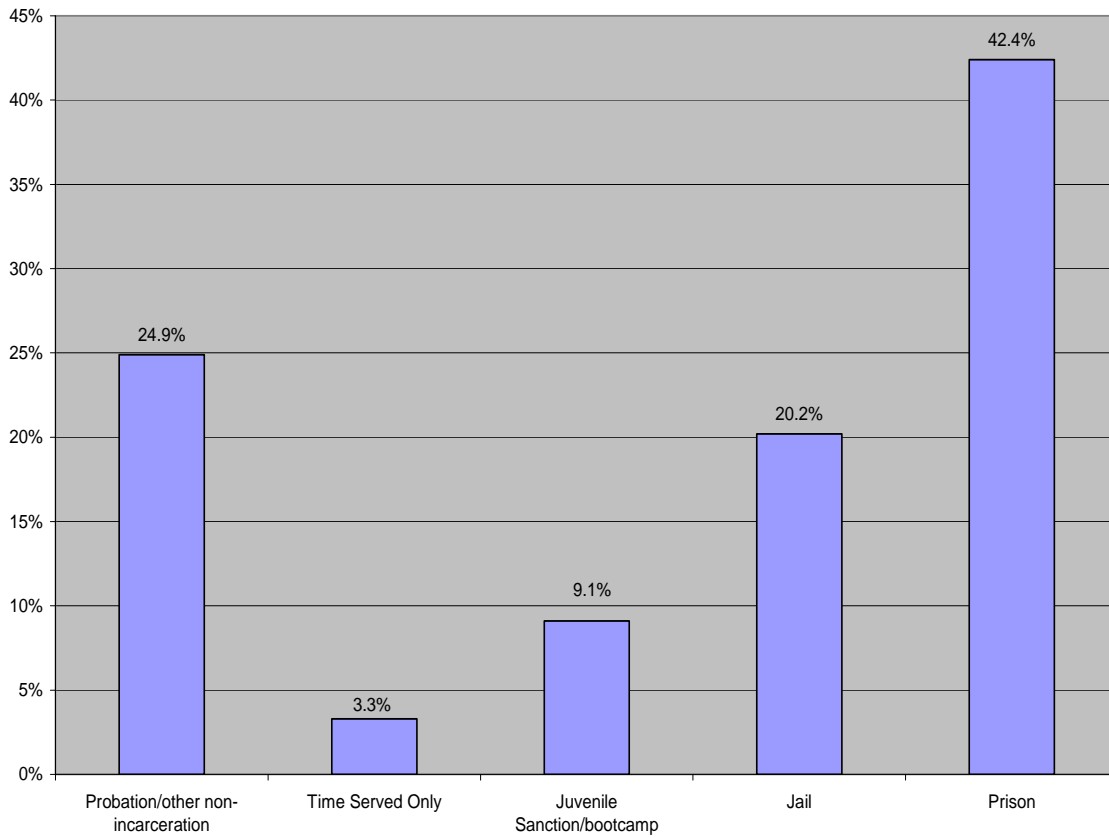
More than one type of sentence was imposed. The table below depicts the most serious sentence.<sup>105</sup> Over nine percent (9.1%) of all the juvenile defendants who were convicted as adults were sentenced to serve their sentence in a juvenile or youthful offender facility, including boot camp. Nearly one-fourth of juvenile offenders were sentenced to probation (24.9%). More than one-fourth (24.3%) of the convicted juveniles received a non-incarceration sentence.<sup>106</sup> (Chart 56)

<sup>105</sup> Sentences of incarceration – prison or jail – were considered more serious than non-incarceration sentences. Those sentenced to prison were the most serious. For those convicted of prison, regardless of other sentences imposed, the most serious sentence is prison. Likewise, for those sentenced to jail, as long as they did not receive a prison sentence as well, the most serious sentence was jail.

<sup>106</sup> Time served refers to a sentence whereby the period of pretrial detention is recognized as the sentence. For purposes of distinguishing between incarceration and non-incarceration sentences, time served is an incarceration sentence.

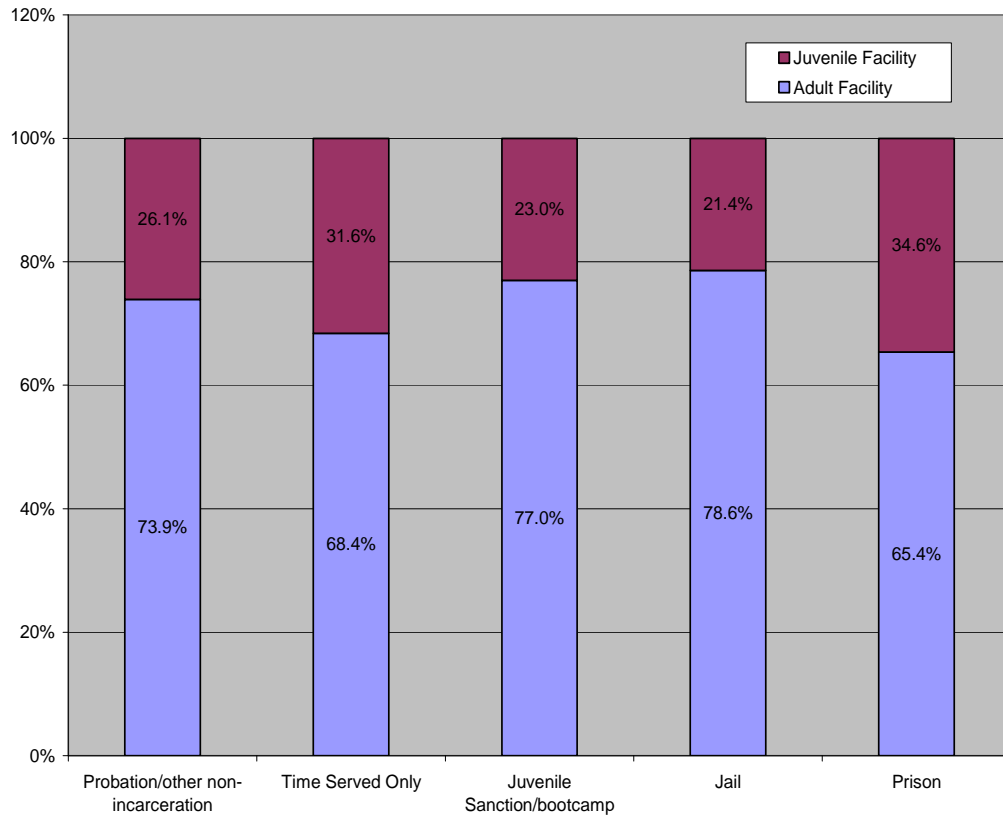


**Chart 56: Most Serious Sentence Imposed in Criminal Courts, 1998**



How many of the youth whose sentence was not prison spent time in an adult facility pretrial? The vast majority of all youth were held in an adult jail pretrial. Nearly three-fourths (73.9%) of those who were sentenced to probation only were detained in a jail pretrial. An even higher percentage of juveniles (77%) who were sentenced to a juvenile facility were detained in an adult jail pretrial. Interestingly, the lowest percentage of youth who were held in an adult jail prior to their conviction (65.4%) were sentenced to prison. (Chart 57)

**Chart 57: Most Serious Sentence Imposed for Juvenile Defendants Detained in Adult Jails Pretrial in Criminal Courts, 1998**



Looking at the relationship between the facility where the juvenile defendants were held pre-disposition and the most serious sentence revealed some interesting findings. The highest percentage of juveniles held in juvenile facility pre-disposition were those who ultimately were sentenced to an adult prison. As table 18 shows, over three-fourths of these juveniles were convicted of a violent offense.

**Table 18: Number of Juvenile Offenders Sentenced to Prison Held Pretrial in Adult Jail Separated From General Population by Age and Conviction Offense**

<u>Age</u>	<u>Violent</u>	<u>Drug</u>	<u>Property</u>	<u>Public Order</u>	<u>Misdemeanor</u>
13	1	1	0	0	0
14	24	1	14	0	1
15	86	0	10	2	0
16	214	50	94	18	6
17	236	71	122	18	25
<b>Total</b>	561	123	240	38	32
<b>%</b>	56.4%	12.4%	24.1%	3.8%	3.2%

An examination of the number of juvenile offenders sentenced to prison who were held pretrial in adult jail separated from the general population found that 43.6 percent or 433 youth were convicted of other than violent

offenses.<sup>107</sup> Forty-two of the youth were 14 years old or less, and 17 of these were convicted of a drug, property, or public order offense. (Table 18)

**Table 19: Number of Juvenile Offenders Sentenced to Prison Held Pretrial in Juvenile Facility by Age and Conviction Offense**

<u>Age</u>	<u>Violent</u>	<u>Drug</u>	<u>Property</u>	<u>Public Order</u>	<u>Misdemeanor</u>
<b>14</b>	33	0	1	0	1
<b>15</b>	117	13	4	3	0
<b>16</b>	132	44	18	6	3
<b>17</b>	110	6	16	2	1
<b>Total</b>	392	63	39	11	5
<b>%</b>	76.9%	12.4%	7.6%	2.2%	1.0%

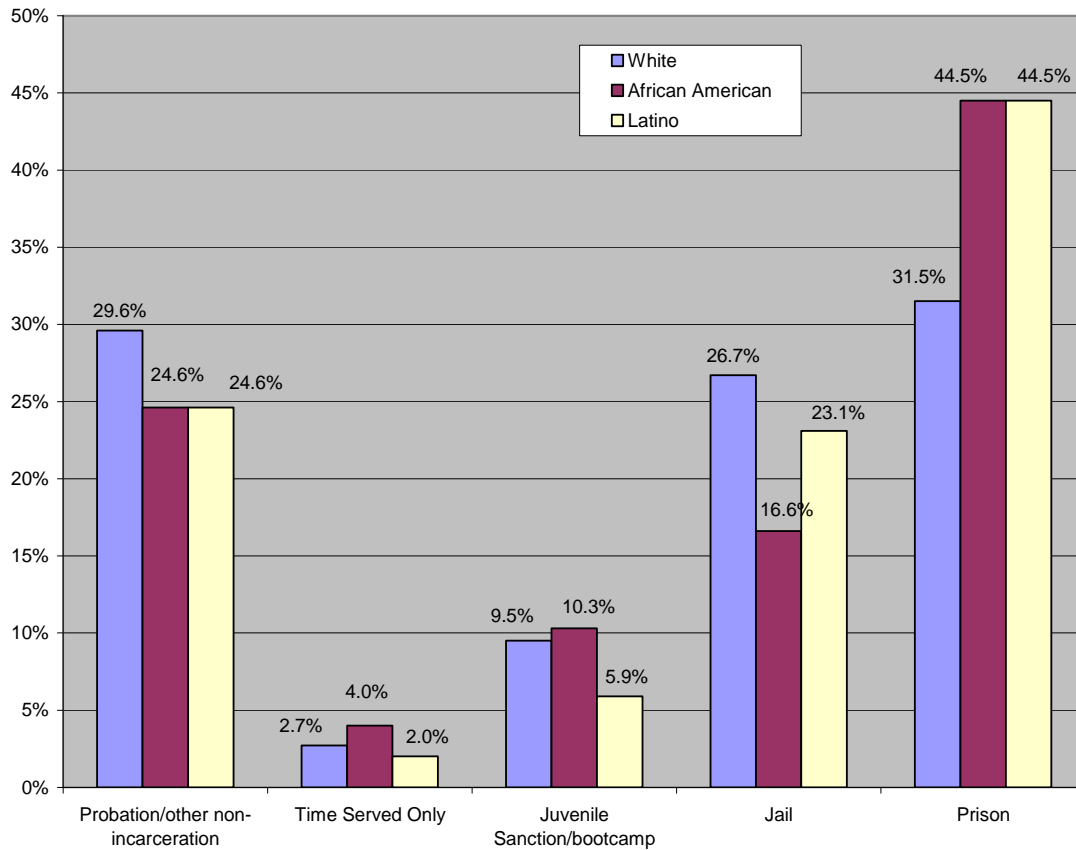
Out of a total of 510 juvenile offenders sentenced to prison who were detained in a juvenile facility pending their case disposition, 118 or 23.1 percent were convicted of a non-violent offense. (Table 19)

Youth of color are more likely than white youth to be sentenced to prison. This may be more attributable to the conviction offense than race/ethnicity, there this will be examined controlling for offense type. The same percentage of African American and Latino youth were sentenced to adult prison (44.5%) compared to 31.5% of white youth. At the other end of the sentence seriousness, a higher percentage of white juvenile offenders received as the most serious sentence probation (29.6%), compared to 24.6% of African American and Latino youth. (Chart 59)

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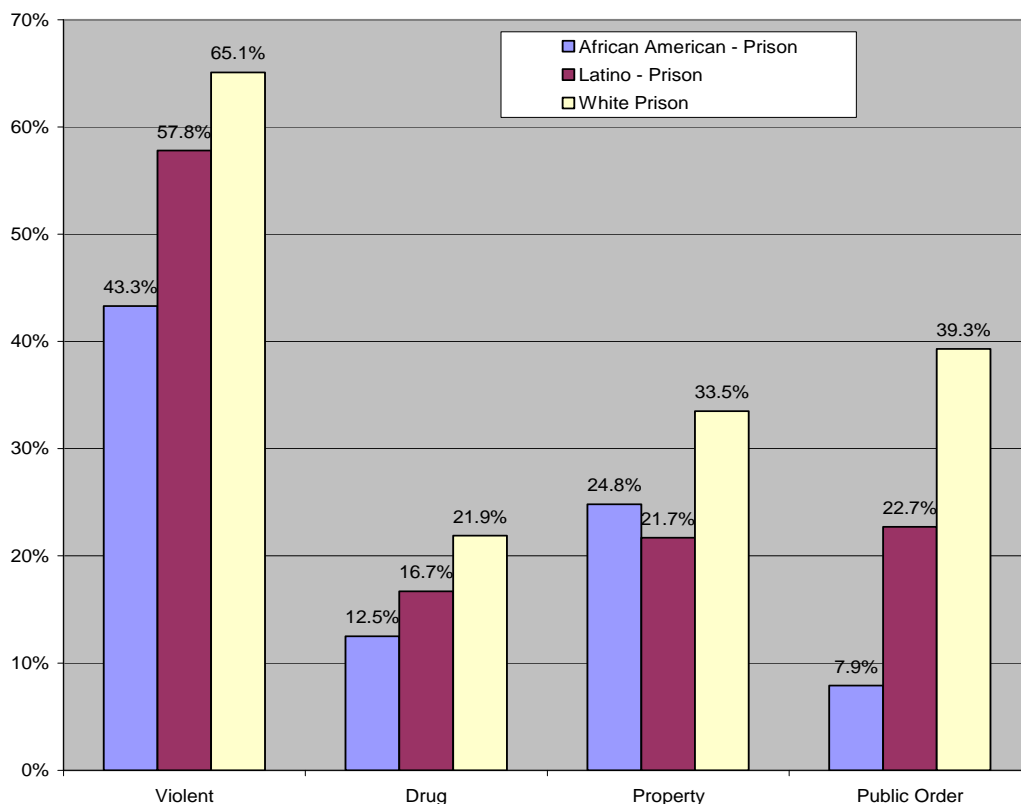
<sup>107</sup> There were only 35 juveniles who were identified as being housed in the general population in the adult jail; there were an additional 233 juveniles who were detained in an adult jail pending case disposition but it was unknown whether they were separated from or part of the general population.

**Chart 58: Most Serious Sentence Imposed by Race and Latino Ethnicity in Criminal Courts, 1998**



Looking only at those who were sentenced to prison, the difference between white and African American youth was more pronounced. While 65.1% of the African American juveniles convicted as adults were sentenced to an adult prison, 43.3% of white offenders were sentenced to adult prison, with Latino youth falling in between (57.8%). The greatest discrepancy between white and African American juveniles who received prison as the most serious sentence was for public order offenses. African American youth were nearly five times more likely to be sentenced to prison for a conviction of a public order offense than white youth. While the difference was not as great, a considerably higher percentage of African American youth were sentenced to prison for a conviction of property offenses as white youth, one out of three compared to one out of four, respectively. (Chart 59)

**Chart 59: Juvenile Offenders Sentenced to Prison by Convicted Offense and Race and Latino Ethnicity in Criminal Courts, 1998**



## V. Summary and Conclusions

While the study echoes some of the findings of earlier reports regarding over-representation and disparate treatment of youth of color, it also reveals disturbing aspects of the transfer process. In effect, in most cases, there is no longer an actual "transfer" process. In a marked departure from tradition, most determinations (76%) to prosecute juveniles as adults are not made by judges, but instead by prosecutors or legislatures.

Moreover, although prosecution in criminal court is thought to be reserved for youth charged with the most serious offenses, this study indicates that many youth who were sent to the adult system, mostly those filed as a result of direct filing and statutory exclusion, had cases that were dismissed, resolved without conviction or transferred back to the juvenile justice system, scarcely justifying their prosecution in adult court, detention in adult jails, and subsequent incarceration in adult jails and prisons. The obvious question to ask is whether there should be better pre-charge screening, which given the findings seems to have happened in cases that were transferred from juvenile court.

Particular disparities in the prosecution of youth of color were also evident. Thus, this research raises serious questions about the fairness and appropriateness of prosecuting youth in the adult criminal justice system. Like other reports, those focused on racial disparities or those focused on detention of youth in adult facilities, this research raises the same serious concerns about the fairness of the justice system. The data indicate that youth of color, particularly African-American youth, are disproportionately caught in the net of adult prosecution, especially on drug charges. The data also indicate the youth of color, particularly African-American youth, receive disparate treatment at several points in the process. On the other hand, the data demonstrate that the system is not monolithic, and youth of color actually receive more favorable treatment (or treatment that seems more favorable) in some circumstances. A value of this research is that it allows a more in-depth examination of these issues.

Perhaps the most significant contribution of this research is the spotlight it throws on those aspects of the justice system that appear to work contrary to the reasons underlying prosecution of youth in adult court. The decision to prosecute a juvenile as an adult has momentous consequences for the individual involved. This study found that nearly two-thirds of the juveniles detained pretrial were held in adult jails pending disposition of their cases. Yet, the overall high pretrial release rates (often with no bail required), high non-conviction rates, and high probation rates suggest that the cases filed in adult court in many instances may not be sufficiently serious or strong. Since most states have committed themselves to increased prosecution of juveniles in adult court, with some notable exceptions,<sup>108</sup> this is clearly an area that requires additional research, policy review, and new legislation to ensure that young people are not unnecessarily and inappropriately swept up into the adult criminal justice system.

## VI. Recommendations

This study has shown that thousands of juveniles, disproportionately youth of color, are being swept up into criminal courts as a result of broad-sweeping legislation rather than case-by-case deliberation of juvenile judges. This study has also demonstrated that there are thousands of juveniles who are exposed to adult jails even if many never get convicted as adults, with many being detained for weeks and months only to have their cases dismissed or adjudicated as juveniles after all. There are many aspects of treating youth as adults that were not part of this study, but which warrant further research.<sup>109</sup>

What this study could not show was how many more thousands of youth ages 16 and 17 who also experience adult jails and prisons because they are considered to be adults in some states. This was because this study focused on only youth who are considered to be juveniles whose cases were filed in or transferred to adult court. Taking the states in this study as examples, in New York persons 16 and above are defined as adults and in Illinois, Michigan, Missouri, Texas, and Wisconsin if they are 17 and above they are considered adults and not eligible for the juvenile justice system.

What this study could not show was how many youth who are charged with misdemeanor or petty offenses are prosecuted in criminal courts because this study focused exclusively on juveniles who were charged with felony offenses. There is no comparable study that examined how many youth are prosecuted as adults for less serious offenses.

What this study could not show is how many arrests of youth on charges that by law mandate prosecution in adult court resulted in a declination of prosecution or down-grading of the charges before the case was filed in the criminal court. This is so because this study only tracked arrests that resulted in a case being filed in adult court. This means that we do not know how many youth were arrested and detained in adult jails for what may be up to 48 hours or even 72 hours if arrested over the weekend, only to be released without prosecution or being charged with a less serious offense.

What this study could not show is how long youth whose cases were transferred to adult court remained under the jurisdiction of the juvenile court and if detained, for how long, before the case was transferred. The transfer process itself may protract the length of a case. Because this study focused exclusively on cases once they were filed in or transferred to adult court, it is unknown how long the cases remained in juvenile court before the transfer occurred.

The findings of this study, as well as the issues articulated above that this study did not address both lead to the same recommendation, and that is, that more research, especially research specifically focused on these issues, is imperative because the safety and the future of children are at stake. The value of research findings is predicated on the availability of accurate, complete, and current information. Therefore, two types of recommendations are set forth here. The first set of recommendations is aimed at officials at all levels of government. The targets of the second set of recommendations are persons involved in analyzing and interpreting the information provided by the first group.

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<sup>108</sup> Connecticut has recently raised the upper age of juvenile court jurisdiction from 16 to 18. Other states are also considering raising the age of criminal court jurisdiction, such as Illinois and North Carolina.

<sup>109</sup> At the outset, it was made clear that this study was not intended to examine the impact on or costs of being prosecuted as adults on the youth, their families or indeed the community.

For the first group, which is comprised of criminal justice officials, such as law enforcement officials, jail administrators, juvenile court and criminal court judges and administrators, prosecutors, defenders, pretrial services officers, as well as to probation and parole officers, the challenge is to maintain and make available to researchers accurate, complete and current information. In order to address the gaps of information identified above it is important that all the agencies and offices that these individuals represent collect data on youth under the age of 18, regardless of the definition of adult in the state. This means that:

- Each law enforcement agency should record the number of youth who are arrested. And for each youth under the age of 18 who is arrested, a record should be kept that captures the following individual and arrest specific information: date of birth, gender, race, ethnicity, and juvenile and criminal history, if any, offense and arrest dates, arrest charge, and information recorded on the incident report such as, if applicable, injury to victim and use of weapon.
- To rectify the situation of national arrest statistics that do not distinguish between white, non-Latino/Hispanic arrestees from white, Latino/Hispanics, law enforcement agencies should have distinct racial and Latino/Hispanic categories.
- Similarly, the term juvenile used in national statistics – whether by FBI arrest data or BJS jail inmate data – should refer to youth who fall under the upper age of juvenile court jurisdiction and not simply under 18 years of age.
- Each jail should record for each youth under the age of 18, in addition to much of the same information delineated for the law enforcement agencies, the length of stay (date of admission and date of release), status (i.e., pre-trial, sentenced, awaiting transfer to another facility, etc.), if pretrial, conditions of bail, including any holds, and if convicted, sentence type.
- Each criminal court system should record for each youth much of the same information as above as well as the all the dates and outcomes of each event, such as the filing date and the filing mechanism (i.e., whether transferred from juvenile court or filed at the discretion of the prosecutor or automatically because of statutory exclusion), the bail hearing and bail conditions imposed, release/ detention status, the disposition date and disposition type (i.e., whether there was a conviction or not), and if relevant, sentence date and sentence type.
- Each probation office should record for each youth under the age of 18, much of the same information as above and in addition, information that is contained in presentence investigation reports, including education (or employment history and status) about the individuals' medical and mental health history and status, and amenability to treatment.
- Each prison and other corrections institutions (e.g., boot camps, halfway houses, etc.) should record for each youth under the age of 18 much of the same information as above as well as information pertinent to the setting, such as admission and release dates, classification status, treatment and program participation and outcome.

For the second group, which is comprised of researchers, advocates, data repositories, and concerned citizens, the challenge is to properly compile, analyze and interpret and disseminate the information provided by the first group.

- Local, state and national entities should prepared statistical reports that aggregate the individual information or make all the individual level information available for aggregation. For example, the Department of Justice and the Office of Juvenile Justice and Delinquency Prevention, which co-sponsored the study whose data were used in this study, should jointly or independently sponsor further research along the lines described above. At a minimum, the Juvenile Defendants in Criminal Courts study should be replicated as soon as possible in counties and states that have a high volume of cases in criminal courts involving juvenile defendants.
- It is important to study all cases involving youth, including cases of youth under the age of 18 regardless of their status as adults and not only for felony offenses but for all charges, including misdemeanor and petty charges.
- Because children of color other than African Americans account for a small percentage of juveniles who are prosecuted as adults, effort should be made to over-sample these groups in the research conducted.
- It is important to study all arrests for offenses that are automatically excluded from juvenile court to determine what happens in those cases and to the youth involved. How many of these arrests actually result in cases being filed in criminal courts? How many of these arrests place the youth in an adult jail awaiting the initial court appearance?
- The current information nationwide concerning youth held as adults in adult jails depicts annual variations in population from a low of 4,836 youth who were in jail on June 30, 2006 to a high of 8,598 on June 30, 1999.

There are no apparent national trends with the numbers fluctuating between these two extremes. It is difficult to discern from a national study if there is similar variation in each county jail or a few large jails. A study of jails holding juvenile defendants prosecuted as adults should be conducted, not only looking at a one-day snap shot but one that looks at admissions over the course of a year, at a minimum, as well as length of stay.

There is no substitute for accurate, complete, and current data to understand the breadth and depth of the phenomenon of prosecuting youth as adults. Without the data and research we are left with anecdotal information, which may be persuasive to some but nonetheless only portrays a limited picture. What is needed is not just to see one or a few faces of children caught in the net or adult prosecution but all of the children, those who are housed in adult jails while awaiting their fate, many whose lives may be ruined even if their cases do not result in adult prosecution, many who find themselves in the adult system without anyone really seeing their faces, just a cold police report and charging papers.



## VII. Case Studies of Three Counties

Three counties were chosen to examine how some of the findings from the 1998-1999 dataset compare to more current information. Basic information was obtained for Cook County, Illinois, Philadelphia County, Pennsylvania, and King County, Washington for 2006. Data were obtained for all cases that were filed in adult court in the respective three counties for calendar year 2006.<sup>1</sup> These three counties represent different geographic regions – the Northwest, the Mid-Atlantic, and the Midwest. They all have statutory-exclusion laws, with one having undergone a substantial change between 1998 and 2006. In one of the counties the number of cases involving juvenile defendants prosecuted as adults increased, while in the other two counties the cases declined, in one county substantially. All three counties allow juveniles charged as adults to be detained in an adult jail, but only one county opted to do so in 2006. The upper age of juvenile court jurisdiction is 17 in two of the counties and 16 in the third county.

The number of cases involving youth between the ages of 10 and 19<sup>ii</sup> in 1998 and 2006 in two of the counties – Philadelphia and King – were very similar. (Table 1) In comparison, there were over three times as many cases for youth in that age group in Cook County both years. To determine if there are differences among the counties in terms of the proportion of cases involving juveniles that were prosecuted in criminal courts in 2006, the rate of cases filed in adult court per 100,000 of youth ages 10-19 was calculated.

**Table 1: Cases Filed in Criminal Courts Per 100,000 Youth Ages 10-19 in Three Counties, 1998 and 2006**

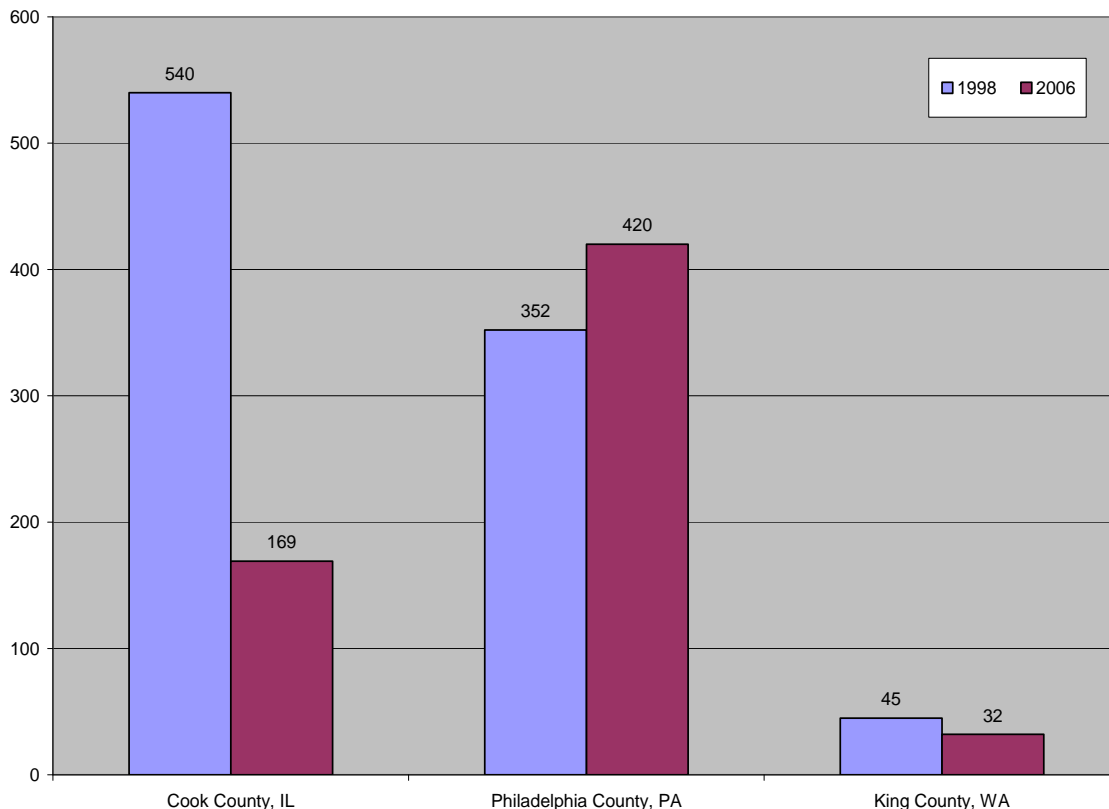
	<u>1998</u> <u>Population</u> <u>Ages 10-19</u>	<u>2006</u> <u>Population</u> <u>Ages 10-19</u>	<u>Juvenile</u> <u>Defendants</u> <u>Prosecuted</u> <u>As Adults in</u> <u>Criminal</u> <u>Court, 1998</u>	<u>Juvenile</u> <u>Defendants</u> <u>Prosecuted</u> <u>As Adults in</u> <u>Criminal</u> <u>Court, 2006</u>	<u>Juvenile</u> <u>Defendants</u> <u>Prosecuted</u> <u>As Adults</u> <u>Per 100,000</u> <u>Population</u> <u>Ages 10-19</u> <u>1998</u>	<u>Juvenile</u> <u>Defendants</u> <u>Prosecuted As</u> <u>Adults Per</u> <u>100,000</u> <u>Population</u> <u>Ages 10-19</u> <u>2006</u>
<b>Cook County, IL</b>	716,622	745,730	540	169	75	23
<b>Philadelphia County, PA</b>	203,137	219,681	352	509	173	232
<b>King County, WA</b>	212,193	220,877	45	32	21	14

In 1998, youth in Philadelphia County, Pennsylvania were twice as likely to be prosecuted as adults than youth in Cook County, Illinois. In 2006, that difference was 8 times greater. Even though Philadelphia County and King County had almost the same number of youth ages 10-19 in 1998 and 2006, youth in Philadelphia County were over 9 times more likely to be prosecuted as adults than youth in King County, Washington. In 2006, the difference grew to nearly 14 times greater.

## Number of Cases

The number of cases involving juvenile defendants filed in the Philadelphia County adult court increased by 19 percent (19.3%) between 1998 and 2006, from 352 to 420. (Chart 1) The opposite was true in Cook County and King County, where the number of cases declined by nearly 69 percent and 29 percent, respectively (from 540 down to 169 in Cook County and from 45 down to 32 in King County). (Chart 1) While identifying the reason or reasons for the decline is beyond the scope of the study, one plausible explanation for the Cook County decline in the number of juveniles prosecuted as adults is the 2005 change in the Illinois statutory exclusion law, which most notably affected drug and weapons offenses.<sup>iii</sup> This will be discussed in greater depth below.

**Chart 1: Number of Cases of Juveniles Filed in Criminal Courts in Three Counties, 1998 and 2006**



## Detention Facility<sup>iv</sup>

The only information available for how many juveniles who were prosecuted as adults were detained in adult jails – either pending the disposition of their cases or transfer to a state prison or other detention facility – or serving a sentence in the facility, is available for a one-day count. Only Philadelphia County has consistently held juveniles prosecuted as adults in the county jail, with the mid-year count holding steady in 1998 and 2005 and increasing in 2006. (Table 2) In King County, the policy is to detain in jail only those juveniles who turn 18 during the disposition of their cases. Apparently there were 9 such juveniles on June 30, 1998 but none on either June 30, 2005 or in 2006. No juveniles in Cook County were held in the adult jail mid-year 1998, 2005 or 2006.

**Table 2: Number of Juveniles Detained as Adults in County Jail, Cook County, Philadelphia County, and King County, 1998, 2005, and 2006**

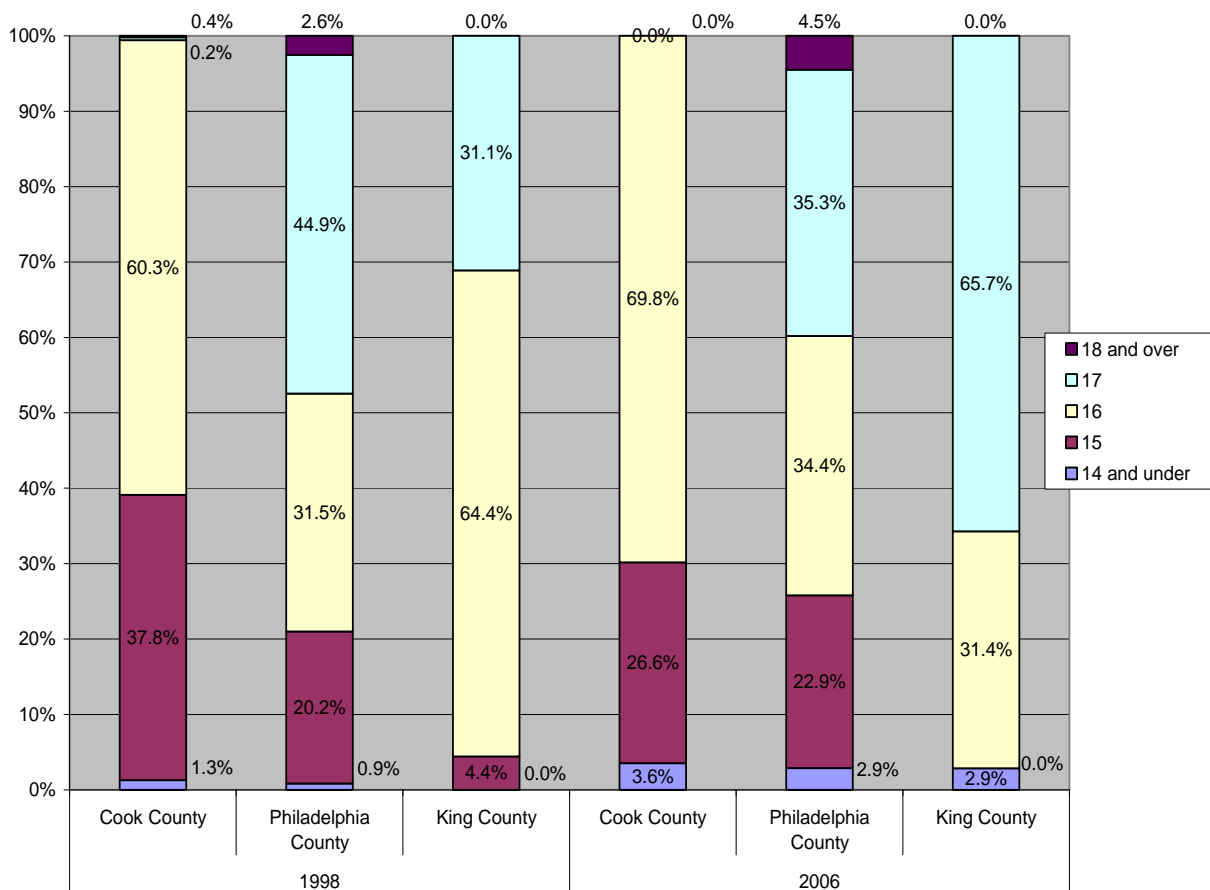
County	State	Juveniles Detained as Adults in County Jail		
		1998	2005	2006

Cook	IL	0	0	0
Philadelphia	PA	105	102	132
King	WA	9	0	0

## Age

The upper age of juvenile jurisdiction is 16 in Illinois, which means that 17 year-olds are defined as adults and are not subject to the juvenile justice system. The other counties are located in states in which the upper age limit of juvenile jurisdiction is 17. Virtually all of the cases of juveniles prosecuted as adults in Cook County involved youth who were 15 and 16 years old, 98.1% in 1998 and 96.4 percent in 2006.<sup>v</sup> The major difference between the two time periods in Cook County was the ratio of 15 and 16 year-olds. In 1998, 15 year olds represented nearly 2 out of 5 cases, but declined to about one out of five in 2006. (Chart 2)

**Chart 2: Age of Juvenile Defendants in Criminal Courts in Three Counties, 1998, 2006**



Interestingly, the percentage of cases involving juveniles 16 or younger who were prosecuted as adults rose between 1998 and 2006 in Philadelphia County, whereas it declined in King County. In 1998, juveniles who were 17 represented 45 percent of all the cases filed in adult court in Philadelphia County, but only 35 percent in 2006. In King County, less than one-third of the cases involved 17 year-olds in 1998, while the reverse was true in 2006 when two-thirds of the cases involved 17 year-olds. In all three counties, a greater percentage of cases involved juvenile defendants 14 years old or younger in 2006 than in 1998.

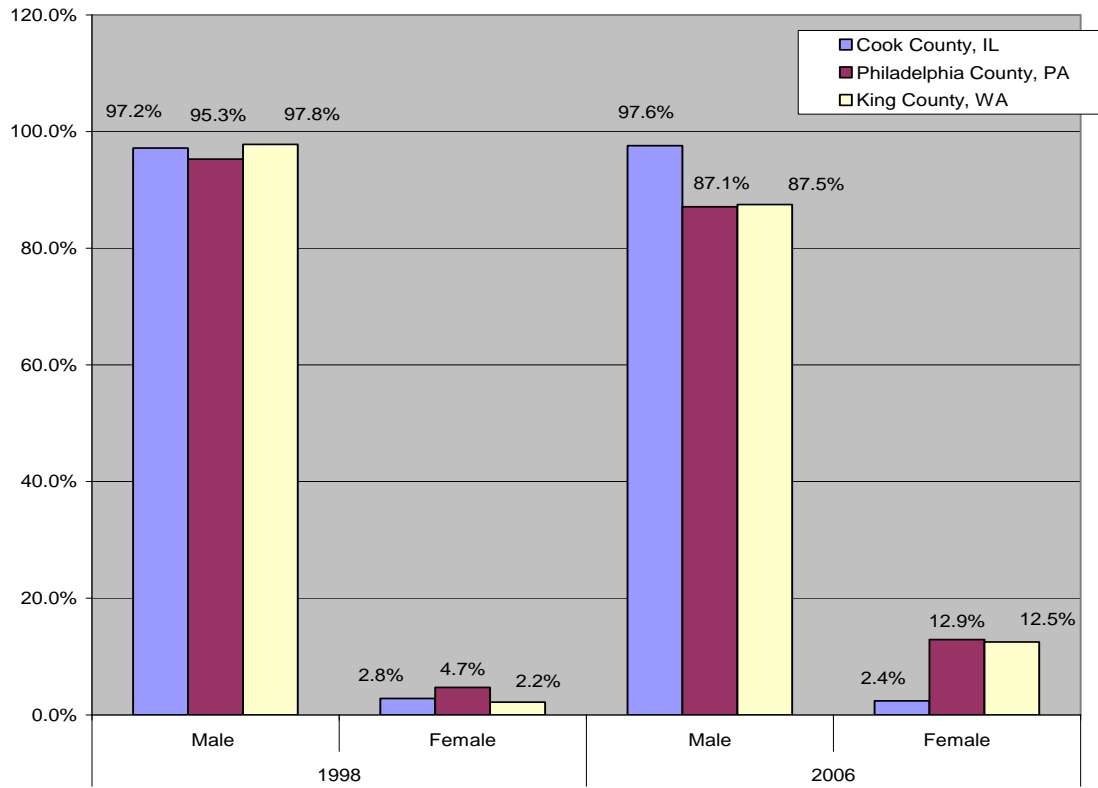
(Chart 2)

## Gender

Because in both 1998 and 2006 the number of female juvenile defendants who were prosecuted as adults was small, it is important to show the actual number of female juvenile defendants rather than rely on percentages. In 1998, the percentage of the cases that involved female juvenile defendants was almost the same across the three counties, with a narrow range between 2.2 percent in King County and 4.7 percent in Philadelphia County, yet the numbers showed that there were 17 females in Philadelphia County and only one female in King County. (Table 3) In 2006, however, two of the counties, Philadelphia and King showed significant increase in the proportion of cases that involved female juvenile defendants. The most dramatic change occurred in King County where the percentage of cases involving female juvenile defendants increased by over five and a half times during this period, even though this represented an increase of three females between the two years. In Philadelphia County the percentage of cases involving female defendants increased by over two and one half times from 1998 to 2006, but there the number of females rose from 17 to 54.

(Chart 3)

**Chart 3: Gender of Juvenile Defendants in Criminal Courts in Three Counties, 1998, 2006**



**Table 3: Number of Male and Female Juvenile Defendants in Criminal Courts in Three Counties, 1998 and 2006**

<b>County</b>	<b>1998</b>		<b>2006</b>	
	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
Cook County, IL	525	15	165	4
Philadelphia County, PA	341	17	366	54
King County, WA	44	1	28	4

## Race and Ethnicity

To determine if there are racial or ethnic differences among the counties in terms of the proportion of cases involving juveniles that were prosecuted in criminal courts in 1998 and 2006, the rate of cases filed in adult court per 100,000 of youth ages 10-19 for each of the racial and Latino ethnic groups was calculated. In Philadelphia County and King County, the rates of African American juveniles prosecuted as adults per 100,000 African American population ages 10-19 increased between 1998 and 2006. The most dramatic rise occurred in King County where the rate nearly doubled from 64 per 100,000 to 112 per 100,000. The reverse was true in Cook County where the rate declined fourfold from 195 per 100,000 in 1998 to 47 per 100,000 in 2006. In all three counties the rates for white juvenile defendants declined by a factor of nearly two in Cook and Philadelphia Counties and over three times in King County. (Table 4)

**Table 4: Cases Filed in Criminal Courts by Race and Latino Ethnicity Per 100,000 African America, Asia, Latino, and White Youth Ages 10-19 in Three Counties, 1998 and 2006**

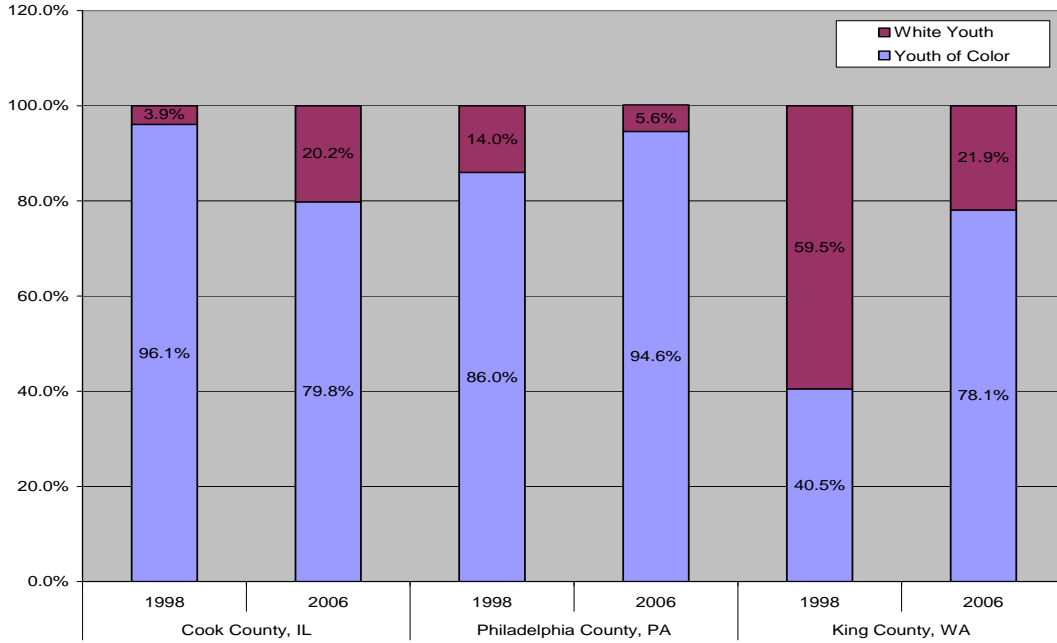
	<b>Juvenile Defendants Prosecuted As Adults Per 100,000 Population Ages 10-19 in Cook, Philadelphia, and King Counties, 1998 and 2006</b>					
	<b>Cook County, IL</b>		<b>Philadelphia County, PA</b>		<b>King County, WA</b>	
	<b>1998</b>	<b>2006</b>	<b>1998</b>	<b>2006</b>	<b>1998</b>	<b>2006</b>
<b>African American</b>	195	47	270	322	64	112
<b>Asian</b>	3	0	12	n/a	19	7
<b>Latino</b>	37	11	160	110	8	26
<b>White</b>	7	13	64	34	16	5

There were some interesting changes in the racial and Latino ethnic compositions of the cases involving juvenile defendants between the two time periods across the three counties as well as within each county. In two of the counties the percentage of youth of color rose, while in the third county it declined. Even with the decline, youth of color still represented four out of five juvenile defendants prosecuted as adults. Youth of color accounted for almost all of the cases (96.1%) that were filed in adult court in Cook County in 1998; in 2006, the percentage declined to 79.8 percent. Looking at this phenomenon from the perspective of white juvenile defendants, their percentage increased five fold between 1998 and 2006 from under 4 percent to nearly 20 percent.

In King County the percentage of cases involving youth of color almost doubled between 1998 and 2006, rising from about two out of five (i.e., around 40%) to nearly four out of five (i.e., nearly 80 percent). In Philadelphia County the percentage of cases involving youth of color increase from 86 percent of all the cases prosecuted as adults in 1998 to 94.6 percent in 2006. The percentage of cases involving white juvenile defendants declined by two and a half times from 1998 to 2006, from 14 percent in 1998 to 5.6 percent in 2006. (Chart 5)

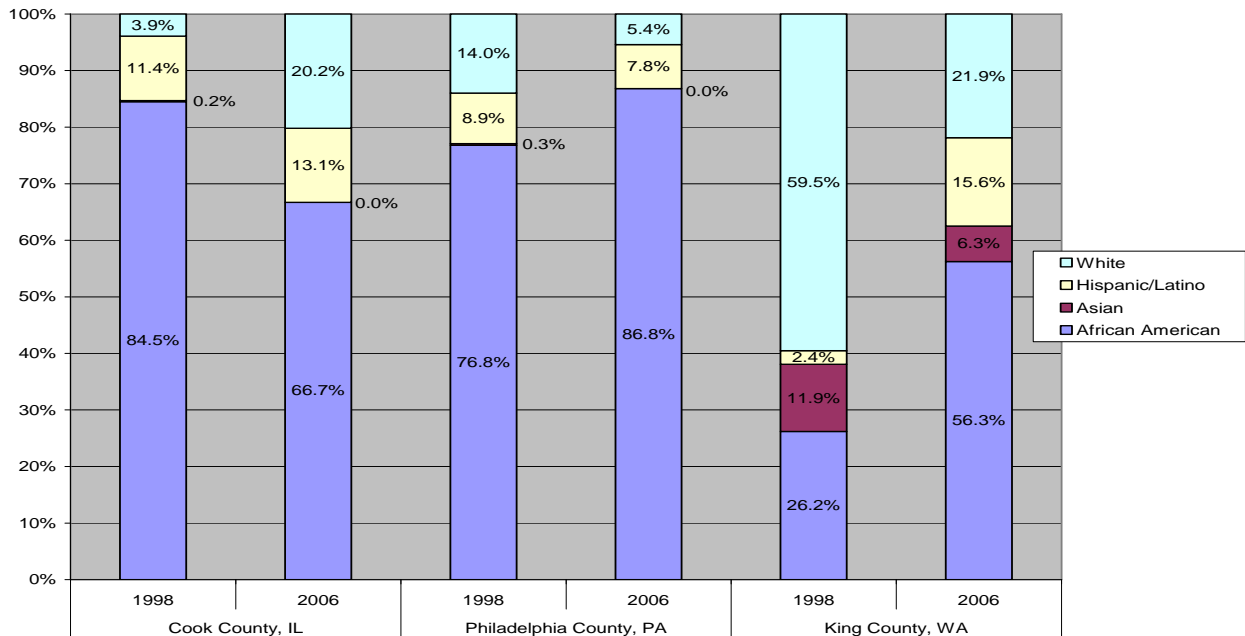
**Chart 5: Youth of Color and White Juvenile Defendants in Criminal Courts in**

**Three Counties, 1998, 2006**



Several interesting findings emerged when examining African American and Latino/Hispanic youth specifically. First of all, the percentage of the cases that involve Latino/Hispanic juvenile defendants increased across all three counties between the two time periods. In two of the counties the increase was relatively small, while in the third county, the increase was over fivefold. In Cook County, the percentage of cases involving Latino/Hispanic juvenile defendants changed from 11.4 percent to 13.1 percent of the cases in 1998 and 2006, respectively. In King County, however, the increase was quite dramatic, from 2.4 percent to 13 percent. In Philadelphia County, there was a decrease from 8.9 percent in 1998 to 7.8 percent in 2006. (Chart 5)

**Chart 6: Race and Latino Ethnicity of Juvenile Defendants in Criminal Courts in Three Counties, 1998, 2006**



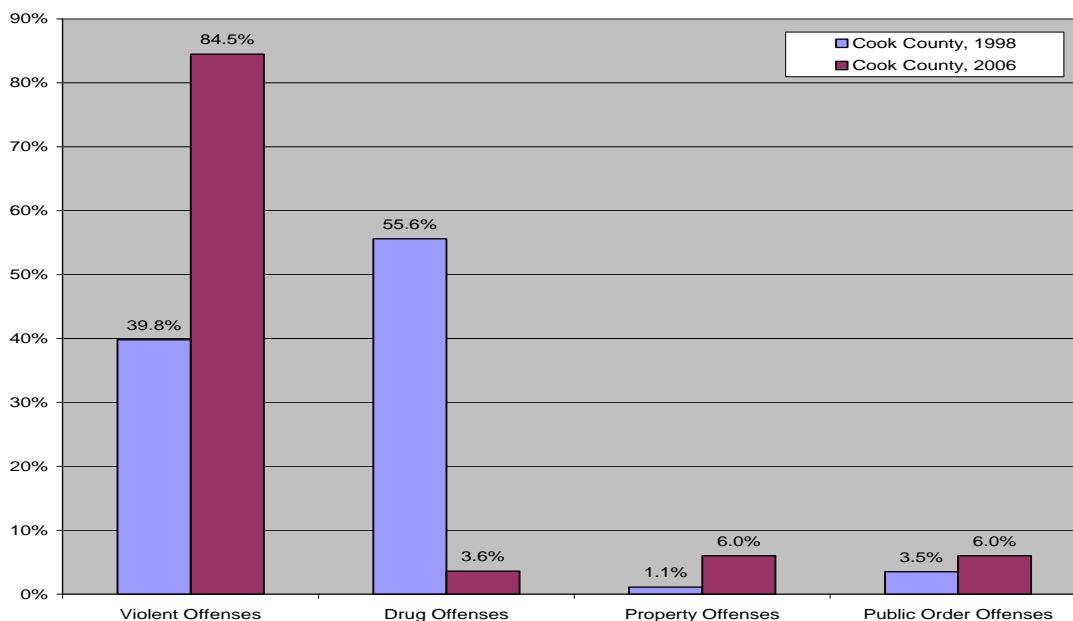
With respect to the percentage of cases that involved African American juvenile defendants, in two counties it rose between the two time periods and in the third county it declined. In Cook County, African American juvenile

defendants represented nearly 85 percent of the cases filed in adult court in 1998, or over four of five cases. In 2006, African American juvenile defendants accounted for two-thirds of all the cases. By contrast, the percentage of cases involving African American juveniles defendants prosecuted as adults in Philadelphia County increased from 76.8 percent to 86.8 percent. Similarly, in King County the percentage of cases involving African American juvenile defendants filed in adult court rose from 36.2 percent in 1998 to 43.5 percent in 2006. The percentage of cases involving Asian juvenile defendants decreased in King County from 11.9 percent in 1998 to 6.3 percent in 2006.<sup>vi</sup> (Chart 6)

## Charges: Cook County

Data indicating the types of offenses with which the juvenile defendants were charged was available for only Cook County and King Counties. In Cook County the percentage of violent crimes more than doubled, representing about two out of five cases in 1998 and more than four out of five cases in 2006. The percentage of cases of juveniles prosecuted as adults who were charged with property offenses increased by nearly six fold from 1.1 percent on 1998 to 6 percent in 2006. The most dramatic change occurred in the percentage of cases in which juvenile defendants were charged with drug offenses. In 1998, drug cases represented over half of all cases (55.6%), yet in 2006 the percentage dropped to 3.6 percent, or nearly a 16 fold drop. (Chart 7)

**Chart 7: Charges Filed Against Juvenile Defendants in Cook County Criminal Courts in 1998, 2006**



This precipitous decline can only be explained by the change in the law, which removed from the statutory exclusion provision drug offenses that occurred within proximity of a school and public housing areas.<sup>vii</sup> Effective August 12, 2005, Chapter 705 of the Illinois Compiled Statutes, Section 405/5-130 – Excluded jurisdiction, excised the following language:

“the definition of a delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of the offense was at least 15 years of age and who is charged with an offense under Section 401 of the Illinois Controlled Substance Act, while in a school, regardless of the time of the day or the time of the year, or any conveyance owned, leased or contracted by a school to transport students to or from school or a school related activity, or residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed income development, on the real property comprising any school, regardless of the time of day or the time of year, or residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed income development, or on a public way within 1,000 feet of the real property comprising any school, regardless of the time of day or the time of year, or residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed income development. School

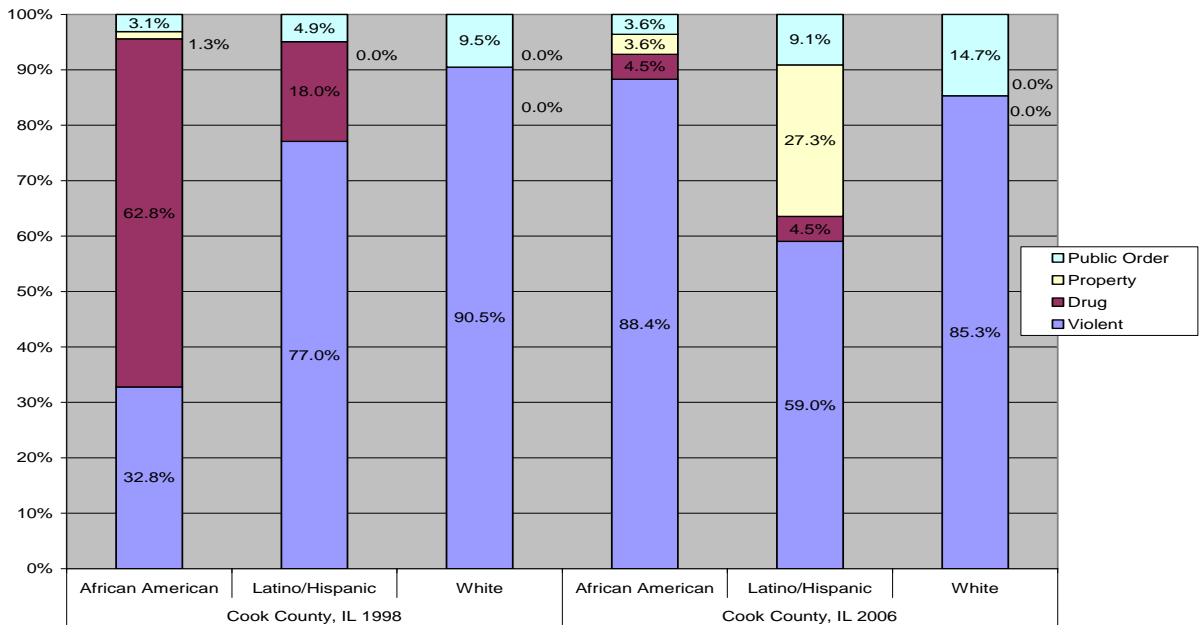


is defined, for purposes of this Section, as any public or private elementary or secondary school, community college, or university. These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of the state.”

Earlier, in Chart 5, it was noted that the proportion of cases that involved youth of color, and particularly African American youth declined between 1998 and 2006. In 1998, youth of color accounted for nearly all of the cases of juvenile defendants being prosecuted as adults in Cook County (96.1%), whereas in 2006 their percentage decreased to 79.8 percent. The decrease was particular evident for African American youth, whose percentage declined from 84.5 percent in 1998 to 66.7 percent in 2006. There is clearly a relationship between the decline in the cases involving African American youth and the decrease in the percentage of drug cases.

Drug offenses accounted for a much lower percentage of all the offenses for which juvenile defendants, regardless of race and ethnicity, were charged as adults in 2006 than in 1998. In 1998, over three out of every five African American youth or nearly 63 percent (62.8%) were charged with a drug offense, yet in 2006 that percentage plummeted to less than five percent (4.5%), representing a 14 fold drop. Latino youth were four times less likely to be charged as adults for drug offenses in 2006 than in 1998. Interestingly, the steepest decline between 1998 and 2006 occurred for white youth, from 19 percent to none. It should be noted, however, that in actual numbers, the impact was greatest on African American youth. In 1998, 285 African American youth who were prosecuted as adults were charged with a drug offense, compared to five in 2006. There were only four white youth who were charged with a drug offense in 1998 and none in 2006. (Chart 8)

**Chart 8: Charges Filed Against Juvenile Defendants in Cook County Criminal Courts in 1998, 2006**



This finding should not be surprising. People of color, especially African American, are over-represented in public housing and in high density areas of Cook County where there are more schools located. After the law was enacted, which no longer automatically excluded from the juvenile system juveniles who were arrested for drug offenses in or around school or public housing, the number who were prosecuted as adults were nearly eliminated. The same law also abolished the automatic exclusion from juvenile court youth who were charged with weapons offenses, and likewise, the number declined from 16 youth of color (13 African American and 3 Latino/Hispanic juveniles) in 1998 to 2 (one each) in 2006. (Table 2)<sup>viii</sup>

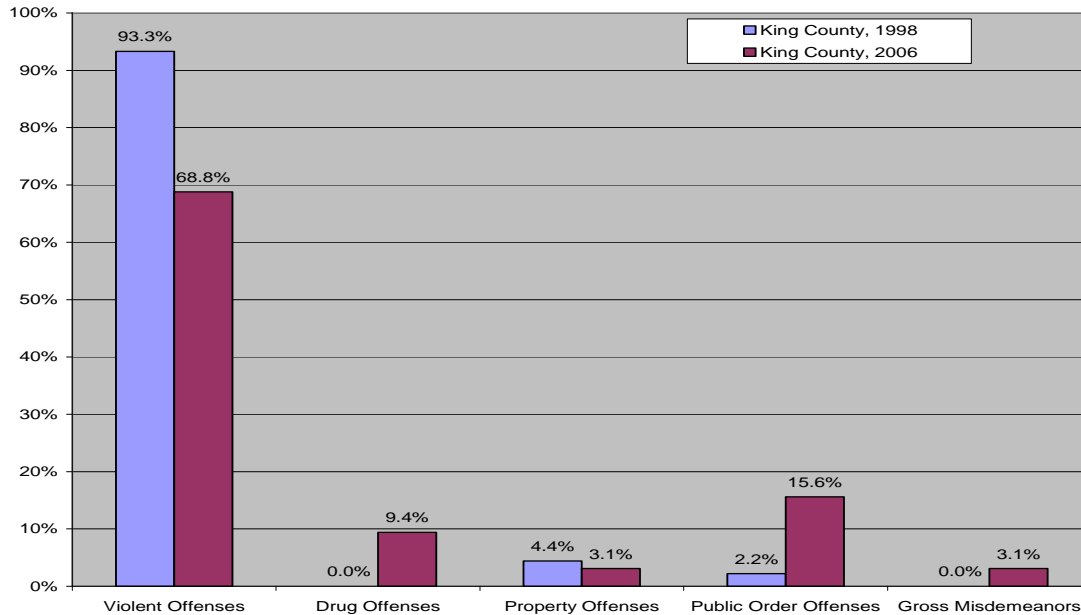
**Table 2: Number of Juvenile Defendants Prosecuted as Adults in Cook County by Type of Offense Category and Race and Ethnicity, 1998 and 2006**

	<b>Cook County, Illinois</b>					
	<b>1998</b>			<b>2006</b>		
	<b>African American</b>	<b>Latino/Hispanic</b>	<b>White</b>	<b>African American</b>	<b>Latino/Hispanic</b>	<b>White</b>
Murder	52	21	3	13	0	10
Rape	21	3	7	7	6	1
Robbery	54	7	1	67	4	13
Assault	22	16	4	11	1	3
Other Violent	0	0	0	1	2	2
Drug Sales	250	10	4	5	0	0
Other Drug	35	1	0	0	1	0
Burglary	0	0	0	0	5	0
Theft	2	0	0	2	0	0
Motor Theft	1	0	0	0	0	0
Fraud	0	0	0	0	0	0
Forgery	1	0	0	0	0	0
Other Property	2	0	0	2	1	0
Weapons	13	3	2	1	1	0
Traffic Related Offenses	1	0	0	3	0	5
Other Public Order Offenses	0	0	0	0	1	0
<b>Total</b>	<b>454</b>	<b>61</b>	<b>21</b>	<b>112</b>	<b>22</b>	<b>34</b>

### Charges: King County

The change in the charge profile in King County between 1998 and 2006 differed from that of Cook County. First of all, in 1998, more than nine out of ten juveniles (93.3%) who were prosecuted as adults were charged with a violent offense. In 2006, the proportion of cases involving violent offenses decline to just over two-thirds (68.8%). The decline in violent offenses was offset by increases in the percentage of drug offenses and public order offenses, nine fold (9.4% in 2006 compared to zero percent in 1998) and seven fold (15.6% in 2006 versus 2.2% in 1998), respectively. (Chart 9)

**Chart 9: Charges Filed Against Juvenile Defendants in King County Criminal Courts in 1998, 2006**



In 1998, all of the youth of color – African Americans, Asians, and Latino/Hispanic juvenile defendants - who were prosecuted as adults were charged with violent offenses. A high percentage (88%) – although not all – of the white juvenile defendants who were prosecuted as adults were charged with violent offenses. In 2006, the charge profile for all racial and ethnic groups, with the exception of Asian juvenile defendants, was more varied than in 1998. (All of the Asian juvenile defendants who were prosecuted as adults were charged with a violent offense.) Because the actual numbers are small, large swings in the percentages may reflect an increase or decrease in only one or two persons. (Chart 10)

**Chart 10: Charges Filed Against Juvenile Defendants in King County Criminal Courts in 1998, 2006**

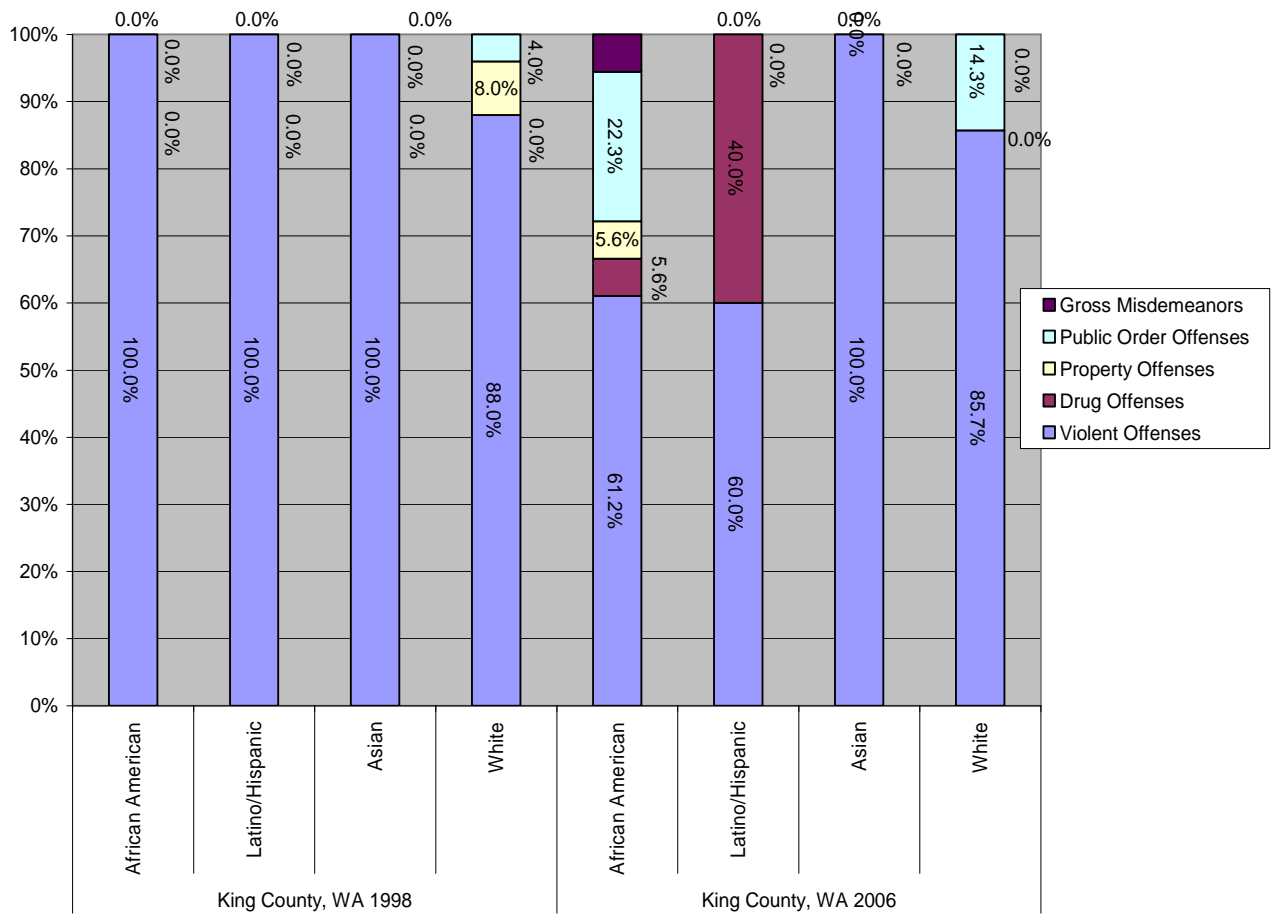


Table 3 clearly shows how the prosecution of just one African American juvenile on a property offense (theft) or other drug can change the percentages. The most dramatic change between 1998 and 2006 occurred for white juvenile defendants charged with a robbery offense, who declined by two-thirds from 15 to 5. There was only one Latino juvenile defendant in 1998, and he was charged with assault, a violent offense.

**Table 3: Number of Juvenile Defendants Prosecuted as Adults in King County by Race and Ethnicity and Offense Category, 1998 and 2006**

	<b>King County, WA 1998</b>				<b>King County, WA 2006</b>			
	<b>African American</b>	<b>Latino/Hispanic</b>	<b>Asian</b>	<b>White</b>	<b>African American</b>	<b>Latino/Hispanic</b>	<b>Asian</b>	<b>White</b>
Murder	1	0	0	2	1	0	0	0
Rape	0	0	0	2	0	0	0	0
Robbery	6	0	4	15	7	2	2	5
Assault	2	1	1	1	3	1	0	1
Other Violent	2	0	0	2	0	0	0	0
Other Drug	0	0	0	0	1	2	0	0
Burglary	0	0	0	2	0	0	0	0
Theft	0	0	0	0	1	0	0	0
Weapons	0	0	0	1	3	0	0	1
Other Public Order Offenses	0	0	0	0	1	0	0	0
Gross Misdemeanors	0	0	0	0	1	0	0	0
<b>Total</b>	<b>11</b>	<b>1</b>	<b>5</b>	<b>25</b>	<b>18</b>	<b>5</b>	<b>2</b>	<b>7</b>

In 2006 there was one Latino juvenile defendant who was charged with assault. That youth comprised one out of five Latino juvenile defendants who were charged as adults. There were fewer Asian youth who were prosecuted as adults in 2006 than in 1998, 2 compared to 5, but both of the Asian juvenile defendants were charged with a violent offense in 2006 (robbery) and all five were charged with a violent offense in 1998 (four for robbery and 1 for assault). (Table 3)<sup>ix</sup>

## Summary and Conclusion

The finding of greatest consequence was that a change in the law can have a significant impact on the number of youth who are prosecuted as adults, and in this situation, mostly affecting youth of color and specifically African American youth. It is important to note that before the change in the law the majority of cases of youth prosecuted as adults involved those charged with drug offenses. In fact, 300 15 and 16 year olds, 285 of whom were African Americans, were prosecuted as adults, some convicted and sent to the state penitentiary. Since the change in the law, most of these cases, one-third as many as before, involve violent offenses.

Barring a change in a law concerning which juveniles are to be automatically treated as adults for purposes of prosecution, such as the 2005 Illinois statutory exclusion provision, the data for these three counties did not show any evident trends or patterns between 1998 and 2006 in the number or type cases or the demographics of the juveniles who were prosecuted as adults. There is no reason to believe that these three counties are not indicative of the other counties that participated in the 1998-1999 study. In 2006:

- Youth of color continued to be overrepresented in the number of juveniles whose cases were prosecuted in criminal courts.
- Female juvenile defendants continued to constitute a small proportion of these cases, although in two of the jurisdictions the percentage increased.
- Most juveniles ended up in criminal court charged with violent offenses although a certain percentage of those charged with property, drug, and public order offenses continued to be prosecuted as adults.

These findings point to the need for more research. This research should be at both the county-level and state-wide to document the exact number of children who are treated as adults, some of whom may be detained in jail pending the disposition of their cases, others sent to prison once convicted.

- What are their ages?
- What is their gender?
- What is their race and ethnicity?
- What offenses are they charged with?
- How many are held in adult jails while they wait for their case to be disposed?

Research should also be conducted of the laws that define which juveniles are eligible or mandated to be treated as an adult.

- Do these laws have a disparate impact on youth of a certain age? (Differences in the upper age of juvenile court jurisdiction)
- Do these laws have a disparate impact on youth of a certain race or ethnicity?
- Do these laws have a disparate impact on youth who are detained in adult jails?
- Do these laws have a disparate impact on youth who are charged with certain offenses?

This report already provides answers to some of these questions at least for these three counties.

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<sup>i</sup> Data were obtained by special request from the Circuit Court of Cook County, the Philadelphia Court of Common Pleas, and the King County Superior Court. Because the 2006 information provided for Cook and King Counties was based on the cases that were filed in the adult court, it is uncertain whether they included cases that were transferred from the juvenile court. On the other hand, the 1998 information included both types of cases, those that were transferred from the juvenile court and those filed directly into the adult courts in both counties.

<sup>ii</sup> The Census Bureau of the United States categories age into 17 groups ranging between ages 0 to 4 and age 85 and above. The most appropriate groups for this study are ages 10-14 and 15-19.

<sup>iii</sup> Public Act 094-0574: 750 Illinois Compiled Statutes 405/5-130.

<sup>iv</sup> Jail and Prison Inmates, 1998, 2005, and 2006 data from the Jail survey sponsored by the Bureau of Justice Statistics, U.S. Department of Justice, available from the Inter-consortium of Social Science Research (ICPSR) at the University of Michigan.

<sup>v</sup> There were seven children in 1998 and six in 2006 younger than 15, who were charged as adults in Cook County.

<sup>vi</sup> In King County there was also a case involving an American Indian that is not included in this chart.

<sup>vii</sup> Ibid.

<sup>viii</sup> While the numbers are small, they do represent all of the cases that were prosecuted during a one-year period in 1998 and 2006.

<sup>ix</sup> While the numbers are small, they do represent all of the cases that were prosecuted during a one-year period in 1998 and 2006.



