



THE CONSEQUENCES AREN'T MINOR

INTRODUCTION

In the early 1990's, as a result of the Central Park jogger case, prominent and influential individuals, such as former Princeton professor and Bush Administration appointee John Dilulio, made doom and gloom predictions about the emergence of a "generational wolfpack" of "fatherless, Godless and jobless" youth. This superpredator phrase stuck and almost every state passed new laws to make it easier to try and sentence youth in the adult criminal justice system. Now researchers estimate that approximately 200,000 youth are prosecuted in adult courts every year. This places youth at risk of assault, suicide and death in adult jails and prisons. The consequences of an adult conviction are long-term, serious and life-threatening. This book is designed to help policymakers understand the full impact of these policies and highlights seven states: California, Connecticut, Florida, Illinois, North Carolina, Wisconsin and Virginia.

KEY FINDINGS

National and state research, and the experience of young people, their parents, and their families, give us a concrete picture of how the laws governing the trying, sentencing, and incarceration of youth do not promote public safety. The following are more than a dozen key findings from this research.

#1 The overwhelming majority of youth who enter the adult court are not there for serious, violent crimes.

Estimates range on the number of youth prosecuted in adult court nationally. Some researchers believe that as many as 200,000 youth are prosecuted every year. Despite the fact that many of the state laws were intended to prosecute the most serious offenders, most youth who are tried in adult courts are *there no matter how minor their offense*. Most of the youth who enter the adult court are charged with non-violent offenses. For example, more than 10,000 young people in Connecticut enter the adult court system each year the vast majority for non-violent offenses. In 2002, in Wisconsin, there were almost 14,000 admissions of 17-year-olds to adult jails—only 15 percent of these youth were arrested for violent crimes such as murder, rape, aggravated assault, and robbery.

#2 Increasing numbers of young people have been placed in adult jails where they are at risk of assault, abuse, and death.

Currently, 40 states permit or require that youth charged as adults be placed pre-trial in an adult jail, and in some states they may be required to serve their entire sentence in an adult jail. According to the National Council on Crime and Delinquency, since 1990 the incarceration of youth in adult jails has increased 208%. On any given day, more than 7,000 young people are held in adult jails. This policy places thousands of young people at risk as it is extremely difficult to keep youth safe in adult jails.

#3 State laws may contradict core federal protections designed to prohibit confinement of juveniles with adults.

Federal protections approved by the Congress in 1974 to protect youth by prohibiting the placement of youth in adult jails (except in rare and limited circumstances) do not apply to youth who are prosecuted as adults.

#4 In contrast to growing numbers of youth incarcerated in adult jails, adult prisons' admissions of youth are declining.

On any given day, more than 2,000 youth are in adult prisons. With the exception of Connecticut, which led the nation in the number of youth in adult prison and experienced

a nearly 20% increase in the number of youth in adult prison in 2005, this number has declined significantly over the past decade. One analysis of the discrepancies in the numbers is that even while more and more youth are being prosecuted as adults, few are found to commit crimes serious enough to warrant time in adult jails. Many youth could be safely kept in the juvenile justice system. Youth in adult prisons are at risk of abuse, sexual assault, suicide, and death, which has led experts to conclude that “clearly, juveniles are a vulnerable population within adult correctional facilities.”

#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.

In most instances, juvenile court judges do not make the decision about whether a youth should be prosecuted in adult court, despite the fact that a juvenile court judge is a neutral player who is in the best position to investigate the facts and make the decision.

#6 Access to effective legal counsel is a deciding factor on whether a youth is prosecuted as an adult.

The effectiveness of a youth’s lawyer can be the difference between whether a youth is prosecuted as an adult or as a juvenile by the justice system.

7 Youth of color are disproportionately affected by these policies.

In every state profiled in this report for which data are available, youth of color are disproportionately affected by these statutes. For example, of the 6,629 youth who entered the custody of the California Department of Corrections for an offense committed prior to their 18th birthday, seventy percent were African-American and Latino, and less than 10 percent were white. In Illinois, youth of color are about a third of the youth population, but research has shown that they have represented 9 out of 10 young people in the adult system.

8 Female youth are affected too, but little is known about them.

Very limited data are available on girls in the adult criminal justice system. No recent, comprehensive national research studies have been undertaken that document the impact of the placement of girls in the adult criminal justice system. There are model approaches to serve girls in the juvenile justice system that could be more viable alternatives to placing girls in the adult justice system.

#9 The consequences for prosecuting youth in adult court “aren’t minor.”

Youth tried as adults face the same punishments as adults. They can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults and may receive mandatory minimum sentences or life without parole. The only consequence that youth cannot receive is the death penalty. When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry the stigma of an adult criminal conviction. They may have difficulty finding a job or getting a college degree to help them turn their lives around. The consequences of an adult conviction aren’t minor; they are serious, long-term, life-threatening, and in some cases, deadly.

10 The research shows that these laws do not promote public safety.

Although research on the full impact of these laws is ongoing, the most current results reveal an ever-increasing negative impact on youth adjudicated in the adult criminal justice system. In addition, studies by researchers throughout the country show that sending youth to the adult criminal justice system doesn’t work to reduce crime. In one study comparing the recidivism of youth waived to criminal court with those retained in juvenile court, the research found that those in the “adultified” group were

more likely to be re-arrested and to commit more serious new offenses; they also re-offended more quickly. Another study that compared the recidivism rates of youth in two states (New York and New Jersey), that differed only by the age at which they prosecuted youthful offenders in the adult system: This study found that, youth tried in adult court were much more likely to re-offend more quickly and with more serious offenses.

11 These laws ignore the latest scientific evidence on the adolescent brain—the same evidence that informed the Supreme Court’s decision on barring the juvenile death penalty.

The Supreme Court’s decision relied heavily on new scientific research showing that certain areas of the brain, particularly those that affect judgment and decision-making, do not fully develop until the early 20’s. State laws passed prior to these research studies do not take into account these findings. The laws need to be reexamined to reflect this latest scientific evidence on the adolescent brain.

12 Assessing the impact of youth incarceration is difficult because of a lack of available data.

As already mentioned, every year thousands of young people are tried, sentenced, or incarcerated as adults. Some researchers say that this could be as many as 200,000 youth every year. However, no one really knows how many young people this affects. There is no one single, credible, national data source that tracks all the youth prosecuted in adult courts. If researchers are not able to assess the magnitude of the impact of these state laws on youth, policymakers lack the information to make informed decisions. There is a need to collect more data so that we can understand just how many youth are affected.

13 The public should invest its dollars by strengthening the juvenile justice system.

The current juvenile justice system in states is a much more viable alternative than the adult criminal justice system in treating young people in conflict with the law. The long-term benefits to society nationwide of returning youth to the jurisdiction of the juvenile court far outweigh any short-term costs that may be incurred. New research shows that rehabilitative programs, including ones that treat serious, chronic, and violent offenders in the juvenile justice system, reduce juvenile crime. And, the cost of simply keeping the system as it is affects society in ways that cannot be calculated in dollars and cents.

THE OPPORTUNITY FOR CHANGE

#1 All the new research supports a change in policy direction.

State and local policymakers did not have the benefit of this new compelling research on recidivism, competency, adolescent brain development, and effective juvenile justice programs when they were considering changes to their state’s laws on trying youth as adults. Just as this research influenced the Supreme Court to eliminate the juvenile death penalty, this new research also provides a strong basis for re-examination of and substantial changes to state statutes and policies.

2 The nation recognizes the need for change, and some states are implementing reforms.

State legislators, juvenile and adult court judges, juvenile and adult detention, jail, and correctional administrators, and probation officials throughout the country are pushing for reforms nationally and in individual states. These public officials are supported by scores

of prominent national, state, and local organizations who are calling for major changes in national and state policy. A number of states have already begun to re-examine their state statutes and in some cases have implemented policy changes. In addition, youth, their parents, and their families, who have been most affected by these policies, are speaking out, organizing, and educating national and state policymakers.

3 When we invest in young people, they can succeed.

Researchers have not yet been able to quantify the benefits of helping individual youth, who may go on to make significant contributions to society, who directly benefited from the rehabilitative nature of the juvenile court include Olympic Gold Medalist Bob Beamon, U.S. Senator, Alan Simpson and entertainer Ella Fitzgerald, all who may not have made the contributions they went on to make if they had been treated like adults.

RECOMMENDATIONS

While experts from each state have developed their own state-specific recommendations on how the laws and policies in those states should be updated, the report findings support several recommendations that are national in scope. Federal, state, and local policymakers should consider these policies.

1. State and local policymakers should consider immediately adopting the reforms recommended in their state's section such as:
 - increasing the age of juvenile court jurisdiction to 18;
 - banning the placement of youth in adult jails and prisons;
 - providing waiver/transfer to adult court by judicial waiver only;
 - redirecting resources to expand developmentally appropriate treatment and services for youth in the juvenile justice system as an alternative to the adult criminal justice system; and
 - investing in quality and effective legal counsel for youth.
2. Federal policymakers should consider amending the Juvenile Justice & Delinquency Prevention Act (JJDP A) in 2007 by:
 - imposing a federal ban on placement of young people in adult jails and prisons; and
 - strengthening the federal "Disproportionate Minority Contact" provision by requiring states to invest federal and state resources in effective approaches to reducing racial disparities in the justice system.
3. Starting this year, federal, state, and local policymakers should make significant improvements in the juvenile justice system by investing in programs that are developmentally appropriate and evidence-based, through the JJDP A and other federal programs as well as through state appropriations.
4. This year federal, state, and local policymakers should invest in and undertake significant data collection efforts on the impact of prosecuting youth as adults.
5. Federal, state and local policymakers should commit to regularly visit youth in adult jails and prisons and hold public hearings on an ongoing basis to ensure that the youth and families most affected by these policies are involved in policy deliberations.

ABOUT THE ORGANIZATION--THE CAMPAIGN FOR YOUTH JUSTICE

The Campaign for Youth Justice (C4YJ) is dedicated to ending the practice of trying, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. The goals of the campaign are:

- to raise awareness about the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating young people in adult jails and prisons;
- to reduce the number of youth who are tried, sentenced, and incarcerated in the adult system;
- to decrease the harmful impact of trying youthful offenders in adult court; and
- to promote research-based, developmentally appropriate rehabilitative programs and services for youth.

DEDICATION

This report is dedicated to the thousands of young people and their families across the country who have been affected negatively by state laws in the name of public safety.

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WHAT IS THE LAW IN CALIFORNIA?

Since the beginning of California's juvenile court in 1913, there has always been a mechanism for transferring youth charged with serious violent offenses to the adult criminal justice system. However, since March 7, 2000, when California voters passed the "Gang Violence and Juvenile Crime Prevention Act of 1998," a ballot initiative commonly referred to as "Proposition 21," youth have been tried as adults for even minor offenses. Coupled with the state's Three Strikes Law, disastrous consequences can result for a young person with two prior violent felonies convicted and tried as an adult; if charged with any kind of third felony (violent or non-violent), that young person can be sentenced to 25-years-to-life in prison. Both Proposition 21 and the Three Strikes Law have permanently altered several aspects of the juvenile and adult criminal justice systems in California because they were ballot initiatives with strict repeal clauses. The only way these laws can be changed is through a new popular vote or by a two-thirds majority of the State Legislature passing a new law. Given the political dynamics related to criminal justice policy in California, it is unlikely that the law will be changed in the near future.

The following are the laws that govern young people in California.

Young people are required to be prosecuted in the adult criminal system for certain offenses (statutory exclusion).

Proposition 21 requires district attorneys to file cases in adult criminal court for minors age 14 and older charged with either murder with special circumstances (i.e., certain aggravating factors) or certain enumerated sex offenses. In California, this type of transfer provision is commonly known as automatic or legislative waiver.

Young people age 16 and older can face judicial waiver to adult court for serious offenses.

From 1976 through 2000, the decision-making authority over the transfer process rested exclusively with the juvenile court judge. Judges use the judicial waiver process, known in California as a "fitness hearing," in which youth 16 or over can be found "unfit" for (i.e., not likely to benefit from) juvenile court. In this type of transfer, prosecutors can request a fitness hearing, and they bear the burden of proof in showing that a 16- or 17-year-old minor is not amenable to treatment in the juvenile court for any alleged offense, felony or misdemeanor.

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There are five criteria used by judges to decide whether to transfer a youth:

- degree of criminal sophistication;
- whether the youth can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;
- the youth's previous delinquent activity;
- the results of previous attempts to rehabilitate the youth; and
- the circumstances and the gravity of the offense alleged to have been committed.

Proposition 21 modified the original judicial transfer law by stipulating that any young person 16 or older charged with a felony would be presumed "unfit" if he or she had previously been a ward of the court on the basis of two or more felonies committed after the age of 14. This change effectively stacks the odds against youth and makes young people prove that for each of the above-mentioned factors, they are "fit" to be in juvenile court.

Proposition 21 gave prosecutors power to directly file juvenile cases in the adult court (prosecutorial waiver).

Proposition 21 provided substantial new powers to prosecutors to try youth as adults. There are now several categories of cases in which the prosecutor can choose whether to file the case either as a juvenile delinquency petition or as an adult felony complaint. Prosecutors may "directly" file cases in adult court against a young person 16 or older if the youth is charged with one of several enumerated crimes. Prosecutors may also "directly" file cases in adult court against a young person 14 or older if he or she is charged with an offense punishable by death or life imprisonment;¹ is alleged to have committed any felony or attempted felony with personal use of a firearm; or is charged with one of several crimes, and one of the following criteria applies:

- the youth has previously been a ward of the court on a serious offense;
- the pending offense was committed for the benefit of, at the direction of, or in association with a criminal street gang;
- the current offense is a "hate" crime motivated by the victim's race, color, ancestry, national origin, disability, gender, sexual orientation;
- at the time of the offense, the young person knew the victim to be 65 years of age or older, blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair; or
- the youth 16 or older has previously been adjudged a ward of the court for commission of any felony offense committed when he or she was 14 or older, and where, on the current offense the victim was elderly or suffering from an enumerated disability; it was a "hate" crime; or it was committed for the benefit of, at the direction of, or in association with a criminal street gang.²

Criminal court judges have options to return young people to juvenile court jurisdiction under a limited reverse waiver statute.

Even though there were no reverse waiver provisions included in Proposition 21, advocates successfully added provisions giving judges some power to return youth to juvenile court jurisdiction. In certain situations, criminal court judges have the authority to send a case for disposition (i.e., sentence) to juvenile court or to directly order a juvenile disposition. Under the first scenario, if a youth has been prosecuted without the benefit

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of a fitness hearing (i.e., statutory exclusion or prosecutorial waiver) and is ultimately convicted of an offense for which the youth could have proven amenability to treatment in the juvenile system, the youth can request a post-conviction fitness hearing. If successful, the criminal court must impose a juvenile disposition. Under the second scenario, if a young person is convicted of an offense in criminal court that, in combination with the juvenile's age, would have entitled him or her to a fitness hearing without the presumption of unfitness, the youth is entitled to a juvenile disposition unless the prosecutor requests a fitness hearing. Finally, if the conviction is for an offense that, in combination with the youth's age, is not eligible for transfer, the youth must be given a juvenile disposition.

Young people tried as adults may be held in adult jails.

Under California law, it is unlawful to place young people (under the age of 18 regardless of whether they are prosecuted in adult or juvenile court) in "contact" with adult inmates in jails or prisons.³ However, in cases in which youth are being prosecuted in the adult criminal system, they may be detained in a jail or a secure setting for the confinement of adults if:

- the juvenile or criminal court judge makes a finding that detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall;
- contact between youth and adults is limited as mentioned above; and
- the youth is adequately supervised.

After discovering that juvenile probation officers routinely requested judges to order detention in adult jail for minor discipline problems (e.g. typical annoying teenage behaviors), the Youth Law Center, a national nonprofit advocacy organization in San Francisco, sponsored legislation to modify the rules. Now the law requires that before a youth can be placed in a jail, the court is required to find that the youth poses a danger to the staff, other minors in the juvenile facility, or to the public because of the youth's failure to respond to the disciplinary control of the juvenile facility, or because the nature of the danger posed by the youth cannot safely be managed by the disciplinary procedures of the juvenile facility.

Under new California policy, young people tried as adults serve their sentence in juvenile prisons until age 18 and then may be sent to adult prisons.

Under California law, youth convicted in the adult criminal court can be housed in adult prison provided that there is no contact between youth and adult inmates. Since California's juvenile court jurisdiction ends at age 25, California has an extensive array of state-run secure juvenile commitment facilities as part of the California Youth Authority (CYA). However, Proposition 21 prevents many youth convicted in the adult system from being sentenced directly to the California Youth Authority. As a result, many youth have been housed in adult prisons in California despite adequate bed space within juvenile facilities. Until 2004, there were approximately 130 young people housed at the California Correctional Institution in Tehachapi, an adult prison run by the adult Department of Corrections. After a suicide and a subsequent investigation that found inadequate conditions for youth, a policy decision was made and the California Department of Corrections entered into an agreement with the California Youth Authority to house all youth under the age of 18. At the present time, no youth under the age of 18 is being held in a California adult prison.⁴

WHO IS AFFECTED BY THE LAWS IN CALIFORNIA?

When Proposition 21 was passed, there was little data about the numbers and characteristics of youth already being prosecuted in the adult criminal system. At the time of Proposition 21's passing, the only available data showed that arrest rates of youth were

actually lower in the late 1990s than at any time in the previous 25 years.⁵ The only other data available was a study for the Building Blocks for Youth Initiative, *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*,⁶ which found that transfer laws disproportionately affected youth of color.

In 2001, after passage of Proposition 21, Senate Bill 314 was enacted. It required data collection from both juvenile and adult systems to document the impact of the new adultification law. Data available from 2003 and 2005 provide the first comprehensive look at the numbers of youth prosecuted in the adult criminal system in California.

In addition to court system processing data, there are two other sources of data collected at the state level that provide some insight on the number of youth prosecuted in the adult criminal system. Both the California Board of Corrections and the California Department of Corrections collect data about youth housed in jails and juvenile detention facilities. These three data sources do provide insight into the youth tried as adults issue, but since these data are collected by different agencies using different methodologies, their findings are not easily reconciled. Still, all the data reveal that transferring youth to the adult system disproportionately affects youth of color. They also show that the practice varies widely by geography.

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TABLE 1: JUVENILES IN THE ADULT CRIMINAL SYSTEM IN CALIFORNIA⁷

STAGE	2003		2005	
Arrests	221,875	100%	222,215	100%
Direct File in Adult Court	410	–	343	–
Total Juvenile Court Dispositions	87,927	100%	98,919	100%
Fitness Hearings Ordered	586	–	431	–
Found fit	182	31%	113	26.2%
Found unfit	404	69%	318	77.8%
Total Adult Dispositions*	608	100%	422	100%
Arrest Offense: Felony	278	45.7%	399	94.5%
Misdemeanor	330	54.2%	23	5.4%
Convicted	414	68.1%	353	83.6%
Dismissed	166	27.3%	60	14.2%
Returned to Juvenile Court	10	1.6%	4	0.9%
Sentenced in Adult Court				
Prison/CYA	110	26.6%	234	66.3%
Probation	79	19.1%	11	3.1%
Probation with jail	139	33.6%	101	28.6%
Jail	9	2.2%	5	1.4%
Fine	57	13.8%	–	–

* These numbers are artificially low because many youth had not completed their trials yet. For example, in 2005, probation departments reported information on 661 transfers to the adult system. The adult disposition information cited here is for the 422 dispositions received in 2005 as not all cases were completed.

Offenses: The most serious youth?

A very small proportion of youth arrested each year are tried in the adult criminal system (as shown in Table 1 above). Roughly similar numbers of youth get to the adult system via the

direct file and fitness hearing processes. The data show that approximately 70% of youth who go through fitness hearings are declared unfit for the juvenile justice system. This is not surprising given the shift in burden of proof for certain types of fitness hearings as a result of Proposition 21. But what is important to recognize is that judges consider about 30% of youth to be “fit” for the juvenile justice system. Stated slightly differently, juvenile court judges disagree with prosecutors’ decisions to try youth in adult court at least 30% of the time. It is likely that many of the youth who are directly filed into adult court would also be deemed fit for juvenile court if they were able to benefit from a fitness hearing.

The data also counter the popular notion that youth are sent to the adult system for the most serious crimes. In 2003, more than half of youth in the adult system in California were prosecuted for misdemeanors (54.2%) and fewer than 30% of youth received a prison sentence. The data for 2004 were incorrectly reported so those data are omitted here. The 2005 data indicate a possible positive trend of fewer young people being prosecuted for misdemeanors (only 23 in 2005, as compared to 330 young people in 2003), yet many of these young people are still being exposed to the dangers of jail time. In 2005, a third of the young people deemed serious enough to be tried in adult court received sentences involving probation or probation and jail. Across the three-year period, about a third of the youth sentenced in adult court spent some time in jail and were exposed to many of the risks that jail poses to young people, even when federal and state law protects against “contact” with adults.

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The likelihood of being tried in the adult system varies substantially by the county in which the youth is prosecuted.

TABLE 2: ADULT COURT DISPOSITIONS BY OFFENSE

OFFENSE TYPE	2003		2005	
	Arrested	Convicted	Arrested	Convicted
Homicide	23	16	31	24
Forcible rape	2	2	2	2
Robbery	60	49	133	116
Assault	73	56	126	98
Theft	20	13	8	6
Motor vehicle theft	12	9	6	6
Marijuana	N/A	N/A	1	1
Petty theft	N/A	N/A	5	5
Liquor laws	N/A	N/A	N/A	N/A

The disparate impact by jurisdiction—“justice by geography:”

Experience in California also shows the unfair effects of a system that relies so heavily on prosecutorial discretion. In one of the worst demonstrations of “justice by geography,” the likelihood of being tried in the adult system varies substantially by the county in which the youth is prosecuted. In most counties across the state, district attorneys use their discretion to directly file a youth in adult court in fewer than 2% of juvenile delinquency cases. However, in several counties more than 10% of youth are directly filed into adult court.⁸

The data also show a disparate impact in terms of where young people might experience jail incarceration when they are tried as adults. Data compiled from the California Board of Corrections show that pre-trial youth are housed sporadically and infrequently within jails across the state. Counties in which this has occurred in the past five years include Butte, El Dorado, Los Angeles, Madera, Monterey, San Mateo, and Santa Clara. Some of these locations are rural and lack adequate juvenile detention facilities. Some of these youth have been court-ordered to remain in the adult jail pre-trial (e.g., they have had an escape attempt or are otherwise a discipline problem in the juvenile hall), have been sentenced to

the jail, or are awaiting transport to the CYA. From the data reported, it does not appear that these youth stay in the jail for extended periods of time (i.e., they are typically removed within a month).⁹

Race and ethnicity also play a factor in the likelihood of a youth being tried in the adult system.

The California Department of Justice explored the disproportionality of the juvenile and criminal justice systems in their 2005 report. The results confirm the earlier Building Blocks study:

- African-American youth are 4.70 times as likely to be transferred to the adult system as white youth;
- Latino youth are 3.44 times as likely to be transferred to the adult system as white youth; and
- Asian youth are 1.84 times and Pacific Islander youth are 2.36 times as likely to be transferred to the adult system as white youth.¹⁰

There is a disparate racial impact on youth sent to adult prison.

Historical data from the California Department of Corrections show that from 1989 to 2003, a total of 6,629 youth entered the custody of the CDC for an offense committed prior to their 18th birthday. In 1989, the number was 172 youth, steadily growing to a high of 794 youth in 1997, and then declining to 504 youth in 2003. Of those youth:

- 164 youth were female, 2.5% of the total;
- 1,922 youth were African-American, 29% of the total;
- 3,397 youth were Latino, 51% of the total;
- 628 youth were white, 9.5% of the total;
- 682 youth were the race "other," 10% of the total;

Although the public perception of youth housed in adult prison is that they are the "worst of the worst," only 32% of the youth from 1989 to 2003 were sentenced to the CDC for crimes of first- or second-degree murder, manslaughter, or rape. The remainder were convicted of crimes ranging from very serious (e.g., armed robbery) to less serious (e.g., simple drug possession).¹¹

California lacks data indicating how many youth under the age of 18 have been held in adult prisons across the state. Data are not available for us to know whether these youth arrived in CDC custody before or after their 18th birthdays.

YOUNG PEOPLE AND FAMILIES AFFECTED BY CALIFORNIA'S LAWS

The Park Family: One strike and you are out.

Brian Park says he grew up in a "typical, middle-class" family in Alta Loma, California, a suburb about 50 miles east of Los Angeles. The one main difference in Brian's life: he is serving a 45-year-to-life sentence for a drive-by shooting he committed at the age of 16 that injured one person and killed the other.

Brian Park was never a violent or difficult child. Like most teenagers, he started rebelling when he entered junior high school and began hanging out with a "skateboarding crowd."

Between 1989 and 2003, of the 6,629 youth sent to the CDC, 8 out of 10 were African-American or Latino.

When Brian entered high school, he started spending time with a friend his parents, Stewart and Stella Park, believed was a bad influence; Brian and his friend would stay out late, and once, police caught them out past curfew smoking behind a local drugstore.

Concerned for their son, the Parks sent him to live with an aunt in Salinas where he attended a private high school and met with a counselor. After his freshman year of high school, his behavior and grades improved and he returned home. While Brian was in Salinas, his parents attended a parenting class that preached a “tough love” approach. When Brian returned home, he and his parents started to conflict again. The Parks then attended a second parenting class taught by a Korean-American social worker and psychologist, who warned parents that not all children respond well to harsh discipline and noted that the “tough love” approach could harm their relationship with their children. As a result, the Parks changed their parenting style.

When Brian returned to school in Alta Loma, he became the target of Chinese gang members at his high school. The reason was petty. Brian had broken up with his girlfriend, who had indirect ties to the gang, and so the gang believed that he was disparaging them.

One Saturday, the gang tracked Brian down and assaulted him. On Brian's 16th birthday, the gang members drove by the family's house and shot 12 rounds from a semiautomatic weapon, hitting the water heater in the garage and shattering the windows in the house. Fortunately, the gang had called and warned Brian of the attack, so the Park family was not home. After the shooting, Brian became increasingly agitated and fearful. He told his mother, “I'm not going to live past 18.”

The night of June 18, 1995, Brian drove to a restaurant to meet up with friends. While in the parking lot, a group of young white men asked Brian and his friends for a cigarette. When they said they didn't have any, the group began cursing and harassing them. Brian and his friends decided to leave. As they left, one man from the group reached for something from his car trunk. Brian and his friends believed the man was reaching for a weapon, which turned out not to be the case.

Earlier in the day, one of Brian's friends had given him a gun. That same friend told Brian, “Why don't you go cap 'em?” Upset from the incident, Brian shot into the crowd of young men as they drove off. Brian did not realize the bullets had hit anyone until the police picked him up. One 18-year-old was shot in the arm but would recover. The other died of his wounds.

Before his parents even knew he'd been arrested, and without the counsel of an attorney, Brian confessed. His lawyer delayed going to trial for four years, but then had a stroke. The family hired another attorney and started over. In March 2000, after a three-week trial, the judge gave Brian the maximum sentence: 45-to-life.

In the post-three-strikes-world, the Parks understand that it is doubtful that Brian will be released before serving at least 85% of his sentence. Stewart Park trains for triathlons to stay fit so he will be alive and healthy when Brian gets out of prison. He wants to be there to help Brian transition back into society.

In a recent letter to legislators considering Senate Bill 1223, a bill to allow youth a chance to be re-sentenced after serving 10 years or turning 25 years old, Brian wrote:

My name is Brian Park, a 25-year-old inmate of Calipatria State Prison. Three months after my 16th birthday I was shamefully involved in a crime that drastically affected the lives of many people. I am truly remorseful for my actions, and I believe my guilt justifies my '45 to life' sentence. However a small part of me hopes that someone would give me a second chance at life. I feel as if I have grown up so much over the years. Often, I look back at my adolescence and realize how stupid some of my actions were.

Before his parents even knew he'd been arrested, and without the counsel of an attorney, Brian confessed. In March 2000, after a three-week trial the judge gave Brian the maximum sentence: 45-to-life.

Brian Warth: Parole always denied.

The following is an excerpt from *A Fallen Youth Transformed by Spirituality, Education, and a Caring Society* by Brian Warth, a current inmate serving time at Chuckawalla Valley State Prison in California.

I was the youngest of my mom's children, growing up in a gang and drug-infested neighborhood of Southern California. My family struggled early on when my oldest brother was shot dead at age 15 and my second oldest brother was shot multiple times in another gang shooting, but survived.

At age one, I became the focus of a long and bitter custody battle between my parents. Sometimes the judge would order me to live with my mom, sometimes with my dad....By the time I was 12, my siblings were gang members and I started to develop a bad attitude. Soon I also joined the neighborhood gang and my life went on a downward spiral. I got sent to juvenile hall a couple of times and then when I was 14 I was shot in the arm in a gang shooting. My value system was all messed up. I made the most terrible mistake of my life when I was 16: I participated in a gang shooting, which resulted in the death of a rival gang member.

My crime hurt many people (for which I am greatly sorry). I was arrested the following morning and sent to juvenile hall. My short life was over and I hadn't even begun to live yet. Eventually, I was tried as an adult and then transferred to the Los Angeles County Jail. I was 17, slammed down in a cold, one-man cell. The majority of the juveniles I was with were also facing life sentences. Many of them were immediately crushed by the heavy weight of the hopelessness. Finally, when I was 17, I was sentenced to 16-years-to-life in prison.

I could have given up and got worse, like many of my peers did. But a couple powerful things happened that gave me hope. First, my dad told me that I still had a fraction of hope left and that if I would change, one day society would have mercy on me and give me a second chance. My dad firmly believed that America was the land of a second chance.

Suddenly, I saw a small flickering light at the end of my tunnel. Then at age 18, I renounced my gang and decided to change my morals and values. I started to educate myself. Plus, I started to study and emulate the teachings and ethics of Jesus Christ of Nazareth. As I demonstrated my remorse for my crime and a determination to change, more and more people of society came to my aid. I started to grow mentally and spiritually.

At age 20, I was transferred from the California Youth Authority (CYA) to state prison. This was a big shock because now people who had been in prison for up to 30 years surrounded me. Many of them would tell me that I would spend the rest of my life in prison like them. Other youth I knew didn't have the hope that I had because they had no support or incentive to change. So they got worse. I continued to resist depression, peer-pressure, and the violent prison culture.

By the time I was 26, my life was 95% restored. My relationship with my dad was great and I had been married to my childhood sweetheart for many years. My wife has played a key role in my rehabilitation. Plus, I earned several trade class completions and was working toward my college degree.

In 2002, I went up for parole. At that time the parole board only granted parole to .05% of the 1000s of inmates eligible for parole. The parole boardroom was filled with a heavy cloud of pressure. The panel drilled me with questions about my upbringing,

“At age 20, I was transferred from the California Youth Authority to state prison. This was a big shock because now people who had been in prison for up to 30 years surrounded me.”—Brian Warth

crime, and prison time. I answered the best I could and at the end of the hearing I pleaded for my life....

That was a miracle morning for me because the panel honored my change and granted me a parole date. I became the youngest life-inmate to be granted parole. I wish I could say that was the end of my struggle. But five months later then-Governor Gray Davis reversed my parole grant. In opposition to me, he stated in part, that I had grown up in gangs, I never had a full-time job and I had spent my entire adult life in prison. It was a devastating blow, but my hope empowered me to keep standing. I went up for parole again a year later and the panel gave me another parole grant. But once again, the then-Governor reversed it. In 2004, I went back up for parole and for the third time I was granted parole. Currently, I am waiting to see if our new governor will reverse it or affirm it. Strangely enough, my crime partner (the actual shooter in my case) has been paroled from CYA four years now. But he was tried as a juvenile with a different set of rules."

After a media campaign highlighted the conditions that youth were living in at the Men's Central Jail in Los Angeles County, including two suicide attempts by youth, policymakers were forced to find a better solution.

In a support letter for Brian Warth, Correctional Lieutenant, D.C. Schall, wrote, "Warth has three times been found suitable for parole by the Board of Prison Terms. However, all three times, twice by ex-Governor Gray Davis and once by Governor Arnold Schwarzenegger those decisions were reversed. Those decisions did not deviate Warth's productive outlook on life, nor stop him from being a model inmate. This continued effort on his part proves to me that my recommendation two years ago is still valid today. I would like to add, that during my 22 years with the Department of Corrections, currently as a Correctional Lieutenant, I do not write cronos very often and I take my responsibilities to insure for the safety and security of society very seriously. I also believe that if punishment and rehabilitation is the goal of society, then Warth has been severely punished and he is most certainly rehabilitated. In fact, he is the epitome of rehabilitation and will better serve society by being released on parole." Governor Schwarzenegger reversed Brian Warth's fourth parole grant in mid-2006.

WHAT ARE THE POLICY OPTIONS IN CALIFORNIA?

Removing youth from adult facilities.

The most successful advocacy efforts for youth tried in the adult system in California have been the efforts to remove youth from adult institutions, both jails and prisons. After a media campaign highlighted the egregious conditions that youth were living in at the Men's Central Jail in Los Angeles County, including two suicide attempts by youth, policymakers were forced to find a better solution. That solution was a negotiated agreement with the nearby Norwalk facility operated by the California Youth Authority to house the pre-trial youth. At the present time, approximately 40 youth are housed in the "Drake Unit" at the Norwalk facility rather than in the adult jail.¹²

In addition, poor conditions in the Tehachapi adult prison contributed to the suicide death of Francis Ray on July 1, 2003, a teenager serving a three-year sentence for robbery. An Inspector General Report investigation of the Youthful Offender Program at Tehachapi found the conditions were not appropriate for youth. As a result, on July 1, 2004, a Memorandum of Understanding (MOU) between the California Department of Corrections (CDC) and the California Youth Authority (CYA) was entered into that stipulated that male youth under 18 years of age sentenced to the CDC would be housed at CYA until their 18th birthday. Approximately 130 youth who had been living in the adult prison were moved to the Youth Authority. Presently, youth are sent directly to the Youth Authority (versus spending any time in a CDC facility) until the youth turns age 18, at which time the youth will be transferred back to the CDC. However, if the youth can fulfill his sentence before his 21st birthday, he

can request to stay at the CYA until release. Females younger than age 18 were already housed at the CYA girls facility in Ventura pursuant to an MOU entered into in February 2001. The population of girls typically does not exceed 10 at any one time.

Legislative opportunities available after Proposition 21.

Proposition 21 restricts many advocacy strategies because the language of the initiative requires that changes to the law occur via a new initiative or by obtaining a supermajority in the legislature; both are very difficult to accomplish. In lieu of changing any existing laws, advocates have attempted new and innovative methods to highlight the injustice of youth tried in the adult system by adding new layers to the code.

The approach used in Senate Bill 1151, sponsored by Senator Sheila Kuehl (D-Santa Monica), was to clarify the criteria that judges would use in fitness proceedings. As mentioned, one of the five factors that judges consider when deciding whether to transfer a youth is “the circumstances and gravity of the offense.” Senate Bill 1151 sought to add the sentence, “This includes the actual alleged behavior of the minor, the minor’s degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter that may affect the circumstances and gravity of the offense.” This bill would have helped limit the numbers of youth transferred to the adult system by actions perpetrated by their peers. Although the bill passed the legislature, in August 2004 Governor Schwarzenegger vetoed the bill.

A second bill was also sponsored by Senator Kuehl, Senate Bill 1223. This bill would have enacted a new mechanism for courts to review the sentence of a person convicted as a minor in adult criminal court and sentenced to prison. After the person had served 10 years of his or her sentence, or after the person had reached 25 years of age, the person could have requested that the court review the sentence. The court would have the authority to suspend or reduce the sentence. Unfortunately, this bill never got out of committee.

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CALIFORNIA RECOMMENDATIONS

- **Improve the quality of legal advocacy.**

The best way to prevent youth from entering the adult criminal system in California is to have effective legal advocates to help make the case for keeping the youth in the juvenile justice system. The Pacific Juvenile Defender Center has been developing resources to support public defenders in their individual case efforts to obtain dispositions in juvenile facilities. However, many legal advocates are not public defenders. They are often private counsel or panel attorneys not affiliated with a public defender office. Other advocates, including the Loyola Juvenile Justice Clinic, have launched an effort to improve the compensation for contract attorneys paid by the case rather than by the hour.

- **Investigate possibilities of sentence reduction/commutation.**

Some youth will receive sentences forcing them to spend the bulk of their lives behind bars for acts committed when they were very young and immature. Mentioned briefly in Brian Warth’s story, California has a unique law that allows the Governor to override the parole board’s decision in any murder case. Former Democratic Governor Davis used this law to overturn any release possibilities for persons charged with murder. The early indications of Governor Schwarzenegger suggest that he won’t be as categorically opposed to parole, but we do not yet know how willing he will be to let parole decisions stand. To aid in their release, youth prosecuted in California could benefit from post-conviction advocacy support to highlight the progress they have made while in prison.

- **Highlight and address post-conviction employment barriers.**

Given the large numbers of youth who are prosecuted in the adult system for misdemeanors, youth may face serious consequences from their conviction in terms of future employment, financial aid, and other opportunities. The state should create mechanisms permitting convicted youth to participate lawfully in certain government programs and careers despite their criminal history.

NOTES

¹ The offense may be punishable by death; however, youth were not eligible for the death penalty under a separate California code provision in existence prior to the abolition of the juvenile death penalty by the U.S. Supreme Court.

² California Welfare and Institutions Code § 707. Available from www.leginfo.ca.gov

³ Contact does not include participation in supervised group therapy, participation in work furlough programs, or participation in hospital recreation activities so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations. Under federal and state law, it is unlawful to house youth adjudicated in the juvenile system in adult jails, although there are at least two locations (Fresno and Orange County) in California where this happens.

⁴ The California Department of Corrections is now known as the California Department of Corrections and Rehabilitation. The California Youth Authority is now known as the Department of Juvenile Justice.

⁵ Males, M. (2006). *Unprecedented drop in California youth crime and incarceration rates*. San Francisco, CA: Center on Juvenile and Criminal Justice. http://www.cjcj.org/pdf/unprecedented_drop.pdf

⁶ Males, M., & MacAllair, D. (2000). *The color of justice: An analysis of juvenile adult court transfers in California*. Washington, DC: Building Blocks for Youth initiative.

⁷ California Department of Justice, Criminal Justice Statistics Center. *Juvenile justice in California 2003 and Juvenile justice in California 2005*. Available from <http://ag.ca.gov/cjsc>

⁸ Independent calculations by the author using Department of Corrections data from 2002 and 2003 that compared the proportion of direct file bookings to juvenile hall bookings per month.

⁹ Independent calculations by the author using Department of Corrections *Jail Profile Survey*. Although not a focus of this chapter, there is a problem in California with significant numbers of youth who have been adjudicated delinquent being held in the county jail. When the author submitted a public records act request to Fresno County, it was discovered that an additional 30 youth were being housed in a "jail annex" not recorded in the Department of Corrections database. Fresno County Counsel Wes Merritt has commented, "You would think that the toughest kids would be in the jail, but in fact the lowest-level kids are in the jail. These are kids that can be housed in an open dorm setting, so that is why they are there." According to materials provided through the records request, the California Board of Corrections approved a pilot project for Fresno County on February 3, 2003, to allow youth to be held in the North Jail Annex to relieve overcrowding at the juvenile hall. The Jail Pod houses up to 30 post-disposition male minors who are 14 years of age and older. Those transferred to the Jail Pod are selected from the ranks of the "better-behaved minors." The Santa Ana Sheriff's Department in Orange County runs a similar project and houses approximately 40 youth in its jail annex.

¹⁰ California Department of Justice, Criminal Justice Statistics Center. *Juvenile justice in California 2005*. Available from <http://ag.ca.gov/cjsc>

¹¹ Unpublished data from the Department of Corrections Data, February 2004.

¹² For a discussion of the advocacy effort to remove youth from adult jails in Los Angeles, see *No turning back: Promising approaches to reducing racial and ethnic disparities affecting youth of color in the justice system*. (2005). Washington, DC: Building Blocks for Youth initiative. p. 61. Retrieved January 28, 2007, from www.buildingblocksforyouth.org