



# *You're An Adult Now*

Youth in Adult Criminal Justice Systems

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## I. Introduction

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Since the world's first juvenile court was founded in Chicago, our legal system has recognized a separate mandate to rehabilitate youth with an approach that is different than adults.<sup>1</sup> Today, all 50 states and the District of Columbia and the federal government have two distinct systems for dealing with adults and juveniles, and corrections systems kept pace by developing different systems for dealing with the youth. While the majority of youth arrested for criminal acts are prosecuted in state juvenile justice systems, a significant proportion of youth are handled by adult criminal justice agencies.

It has been estimated that nearly 250,000 youth under age 18 end up in the adult criminal justice system every year.<sup>2</sup> However, little attention has been directed to how adult corrections systems are managing the youth offenders that end up in jails, prisons and under community supervision. To address this information gap, the National Institute of Corrections (NIC) convened three dozen juvenile justice and adult corrections experts on June 18<sup>th</sup>, 2010, to consider some of the known issues, impacts and opportunities that face corrections systems as they work to safely and effectively rehabilitate thousands of youth offenders in the nations' jails, prisons, probation and parole systems. This monograph presents the key findings identified during this convening of experts. Some of the most important findings for corrections officials, policymakers and the public include:

- Youth transferred to the adult corrections system recidivate at a higher rate than those kept in the juvenile justice system;
- Pretrial, post-conviction, and community supervision corrections systems face challenges keeping youth safe, effectively providing for their services and supervision, and containing costs required to serve youth appropriately. Due to these and other challenges corrections systems face when managing these youth, the transfer of juveniles in adult institutions might run counter to correctional and rehabilitative goals;
- To overcome these challenges, a number of states and localities have developed innovative ways of managing youth when they have been charged, convicted and committed to the adult corrections system. These changes are helping improve public safety, contain costs, successfully rehabilitate youth and help them transition to adulthood.

By reviewing the issues, impacts and options facing corrections when they manage youth in the adult system, NIC hopes to raise awareness of these issues, and focus the field on finding the best ways to curb juvenile delinquency in correctional settings.

## II. What is known about the issue of juveniles in the adult corrections systems, and where are there gaps in data collection and information?

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### 1) Approximately a quarter-million youth end up in the adult system each year, and most end up there due to age of jurisdiction laws.

The National Center on Juvenile Justice has compiled information for every state and jurisdiction on the three basic ways a youth can end up in the adult corrections system.

First, public safety systems can set ***age of jurisdiction laws***: in some states, under some conditions, a youth is automatically under the jurisdiction of the adult court if they are of a certain age. In New York and North Carolina, for example, all 16 and 17-year-olds are considered adults in criminal proceedings. The largest group of juveniles who end up in the adult system arrive there through are in through jurisdictional age laws: approximately 247,000 youth under 18 ended up in adult court as a result of jurisdictional age laws in 2007.<sup>3</sup>

Second, most states have some kind of ***transfer law***: *by nature of a judicial decision, by the nature of the charge the prosecutor chooses to seek, or, by the nature of the offense*, the youth's case can be transferred to the adult system. Forty-six states have a judicial waiver provision, in 15 states, the transfer is through prosecutorial discretion, 29 states transfer is by categorical exclusion based on the offense. In some places, if a youth engages in a crime while involved in a gang or some other behavior, that makes the case eligible for transfer to the adult court. Juvenile courts transferred approximately 8,500 youth to the adult system in 2007 through judicial waiver statutes.

Finally, some states have a form of ***blended sentencing***, where the juvenile courts are given power to impose a juvenile disposition, but if that youth does not succeed, they may then be transferred to the adult system on the same conviction.

### **Every public safety system draws the line between being a juvenile and being an adult differently.**

Each of the 50 states, the District of Columbia and the federal government have different mechanisms that can transfer a youth to the adult court, and the "age of jurisdiction" of the juvenile justice system varies from place to place. According to the National Center on Juvenile Justice – a research entity representing juvenile and family court judges – 23 states and jurisdictions have no minimum age at which a youth can be transferred to adult court for certain offenses.<sup>4</sup> While some states see juvenile court jurisdiction run through age 15, in others, you are not an adult for criminal justice purposes until age 18.

**Age      Oldest age for original juvenile court jurisdiction in delinquency matters**

- 15      New York, North Carolina
- 16      Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin
- 17      Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming

Source: National Center on Juvenile Justice (2009)

There are also various legal mechanisms a judge or prosecutor can choose to transfer a youth charged with a particular crime to the adult system. Similarly, the research on adolescent development that has driven so many recent changes to juvenile justice statutes also doesn't provide a "bright line" for drawing when a 15, 16 or 17 youth may have the mixture of impulse control and reason to be considered an adult, with some researchers calling to include older youth in the their 20s in the juvenile justice system.<sup>5</sup> In recent Supreme Court rulings on the juvenile death penalty and juvenile life without parole, the courts have made changes to the law that suggest, adulthood begins at age 18. Finally, different juvenile corrections systems have different maximum ages that they can have youth in custody: in California, Montana, Oregon and Wisconsin, a youth can be in the custody of the state juvenile justice system until age 25.

This monograph is focused on all youth under the age of 18. However, we acknowledge that the way the corrections system works, a youth who begins with corrections at 16 or 17 can remain under custody into their twenties: many of the issues and challenges systems face in serving these youth continue past their 18<sup>th</sup> birthday.

**Age      Oldest age over which the juvenile court may retain jurisdiction for disposition purposes in delinquency matters**

- 18      Alaska, Iowa, Kentucky, Nebraska, Oklahoma, Tennessee
- 19      Mississippi, North Dakota
- 20      Alabama, Arizona,\* Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming
- 22      Kansas
- 24      California, Montana, Oregon, Wisconsin
- \*\*      Colorado, Hawaii, New Jersey

Note: Extended jurisdiction may be restricted to certain offenses or juveniles.

Source: National Center on Juvenile Justice (2009)

## **2) Youth transferred to the adult corrections system recidivate at a higher rate than those kept in the juvenile justice system.**

The weight of the research reviewing the public safety impact of sending youth to the adult corrections system has found that youth tried as adults are more likely to reoffend, even when controlling for offense background and other characteristics, than comparable youth retained in the juvenile system. The Centers for Disease Control and Prevention Task Force on Community Preventive Services<sup>6</sup> conducted a systematic review on the transfer of youth to the adult system. The Task Force found:

- **Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence:** Youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for a violent or other crimes.
- **Insufficient evidence that transferring youth to the adult criminal system prevents youth crime:** The Task Force found insufficient evidence to justify assertions that trying youth as adults acts as a deterrent to prevent youth from committing crime in the first place.

In June 2010, the Department of Justice's OJJDP released a monograph, *"Juvenile Transfer Laws: An Effective Deterrent to Delinquency?"*<sup>7</sup> "The research bulletin compiled by Professor Richard Redding found that, laws that make it easier to transfer youth to the adult court system have little or *no general deterrent effect on youth*, meaning they do not prevent youth from engaging in criminal behavior. The report also found that youth transferred to the adult system are more likely to be rearrested and to reoffend than youth who committed similar crimes, but were retained in the juvenile justice system.

## **3) Little is known about young's people prior offense backgrounds, the court processes and decisions that impact them, and how corrections systems manage youth.**

*"There are no systems dedicated to collecting data on transfer today."*—Howard Snyder Bureau of Justice Statistics.<sup>8</sup>

The 51 states and jurisdictions and the federal government each have the authority to run their respective public safety systems, which usually includes a partnership between state, county and city courts and corrections. This reality means that our ability to have national understanding of what is happening to youth when they are transferred to the adult system is frustrated by the diverse ways juvenile and adult corrections operate.

While the public safety system is collecting and analyzing more data than ever before, there are significant gaps in how data and information are processed that obscure the national picture around juvenile transfer. As one national expert recently noted, "the whole pathway is missing"<sup>9</sup> in terms of having national data sets that would allow one to know,

how and why youth end going to the adult system, and what happens to youth and the systems that serve them, downstream.

Information compiled by national agencies like the Office of Juvenile Justice and Delinquency Prevention, the National Center on Juvenile justice (OJJDP), the Bureau of Justice Statistics (BJS) and information compiled by state and local entities do sketch out the basics of how youth end up in the adult corrections system. However, the national picture one can document from national data has been described as fragmented and incomplete, with little ability to know exactly how pretrial, post-conviction and supervision systems are managing this population.

Among the biggest gaps in information why youth end up in the adult system, there is very little information that explains the “how’s and why’s “behind decisions to transfer youth to the adult system. Currently, only 13 states publicly report the total number of their transfers, and even fewer report offense profiles, demographic characteristics, or details regarding processing and sentencing.<sup>10</sup>

Critical information that currently is not collected or analyzed on juveniles who are transferred to the adult system on national basis includes:

- **How a youth’s case is resolved?:** From the decision to prosecute the case in the adult system, to what charges youth are ultimately convicted of, and what their sentence is, little information on the court process are available.
- **How many youth who start in the adult system return to the juvenile system?:** There is no information on how many youth end up back in the juvenile system through blended sentencing, or if their charges are dropped, and recharged as a juvenile.
- **When youth are transferred, what kind of services do they receive?:** While we do know youth are required to receive certain kinds of educational services wherever they are incarcerated, there is no information on the kinds of services, interventions and programming youth may be receiving while in custody, or when they return to the community.
- **How many youth are on adult probation and parole?:** We do not know how many youth are on adult or juvenile probation and parole as result of an adult conviction, the nature of that supervision, and what kinds of services or interventions they might be receiving.

**4) On any given day, there are 10,000 youth in adult prisons and adult jails. Most of these youth in adult custody were convicted of robbery and assault, and most and the vast majority will return to the community before age 21.**

Data from the BJS that looks at the age of youth in adult prisons and jails has shown that, in 2009, there were 2,778 youth are in adult prisons, and approximately 7,220 in adult jails.<sup>11</sup>

Most youth who end up in the adult system were convicted of robbery or aggravated assault: these may be serious crimes, but these offenses generally do not carry the longest prison terms. A monograph reviewing the research on youth in the adult system for OJJDP, of those youth who end up in the custody of the adult system, 80 percent will be released from prison before their 21<sup>st</sup> birthday, and 95 percent will be released before their 25<sup>th</sup> birthday.<sup>12</sup> However, there are also 2,589 people serving Life-Without Parole for a crime they were convicted of when they were a juvenile.<sup>13</sup>

### **5) Youth of color have been disproportionately represented among those youth transferred to the adult corrections system**

As is the case in the juvenile justice system, youth of color are disproportionately impacted by the changes in statute that allow for their transfer to the adult system. African American youth make up 30% of those arrested while they only represent 17% of the overall youth population. At the other end of the system, African-American youth are 62% of the youth prosecuted in the adult criminal system and are nine times more likely than white youth to receive an adult prison sentence.<sup>14</sup> While information is harder to obtain on the Hispanic population due to the challenges in compiling criminal justice data on this population, Hispanic youth have been found to be 43% more likely than white youth to be waived to the adult system and 40% more likely to be admitted to adult prison.<sup>15</sup> Compared to white youth, Native American youth are 1.5 times more likely to receive out-of-home placement and are 1.5 times more likely to be waived to the adult criminal system. Nationwide, the average rate of new commitments to adult state prison for Native youth is 1.84 times that of white youth.<sup>16</sup>

### **6) Many youth end up in the adult system as a result of plea agreements, and are convicted of offenses in the adult court with reduced sentences.**

While every state is different, research done on how juvenile transfer laws work in a number of states have found that most youth who face an adult charge are not convicted of that charge. Instead, the court process that sees a youth charged with an adult offense – an act that can move their case to the adult system – will also see these youth plead to a lesser included offense that carries a different penalty. In some cases and places, a judge may have an opportunity to return the case to the juvenile justice system for sentencing, but the youth may still be detained in pretrial as they await their disposition. One expert convened by NIC reported, as many as 75 percent of those transferred to adult court as a result of a charge are eventually convicted of a lesser offense.<sup>17</sup> Plea agreements may result in a prison term, probation, or depending on the rules in a given state, transfer back to the juvenile justice system.

### **How might we learn more about the pathway youth take through the adult system?**

There are future research initiatives by federal entities that will expand our understanding of both the *why and how* youth end up in the adult system, and what public safety results we may be getting for it.

The Bureau of Justice Statistics has embarked on a new data collection effort to learn more about this population. A nationally representative sample study of 120 counties to look at all the cases that deal with persons under the age of 18 will be shortly underway. When studied, this data would give great detail on the individual cases of youth from 120 counties. In addition, BJS is also conducting a recidivism study to know the public safety outcomes for youth who left prison in 2005 from 30 states: BJS is currently is looking at 70,000 people who left prison in 2005 in 30 states. They are evaluating the recidivism rates of younger offenders compared to older offenders. This allows for state-by-state variation, and will provide more information about transfer cases.

**Options for corrections systems, and federal, state and local policymakers:**

- 1) Encourage more research at the state, county and local criminal justice level on the system implications of transfer.** As demonstrated in what know about transfer, the best data and information that tells policymakers the most about “the invisible pathway” of juveniles who are tried as adults can be found from analysis of the information at the state, county or city level. Studies done by academics, state, county and city agencies, and nonprofit organizations that have mapped the pathway in their jurisdictions have revealed most information on why and how youth end up in the adult public safety system, what happens to them, and what the outcomes of those decisions were. States, counties and cities whose varied corrections systems are impacted by the process and outcomes of juvenile transfer should be encouraged to study these issues, and map out the pathway at the local level.
- 2) Match resources for national research efforts with local analysis.** It is encouraging that BJS has returned to the forefront of analyzing how local criminal justice systems make the transfer decisions, and document their outcomes. However, the best and most relevant information to policymakers on that influence policy change at the local level is conducted at the local level. Through various national justice research entities, the federal government could incentivize the collection of this research by funding research solicitations at the local level.

### **III. What are the issues, impacts and options facing public safety systems when youth are awaiting trial on adult charges?**

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*“The average 14-year-old is a “guppy in the ocean” of an adult facility. The law does not protect the juveniles; it says they are adults and treats them as such. Often they are placed in isolation for their protection, usually 23 ½ hours alone. Around age 17, we put him in the young head population, a special unit where all the youth are put together, and the 13 and 14 year olds normally fall prey there as well.”—Sheriff Gabe Morgan, Newport News, Virginia.<sup>18</sup>*

*“The American Jail Association is opposed in concept to housing juveniles in any jail unless that facility is specifically designed for juvenile detention and staffed with specially trained personnel.” (2008 policy statement)*

*“Counties are urged to remove juveniles from correctional facilities which detain accused or adjudicated adults.”—National Association of County Organizations (2009) policy statement)*

*“In Georgia, kids being held pre-trial weren’t being treated differently from adults. When kids are in adult facilities, I am not sure there is much learning going on that would enable the kids to mature.”—Orlando Martinez, former director, Georgia Department of Juvenile Justice.<sup>19</sup>*

There is very little national information on what happens to a youth when they are initially moved to the adult criminal justice system through various legal mechanisms. In the majority of states across the country, youth may be held pretrial in an adult jail, while in some states and jurisdictions, youth are held pretrial in juvenile detention centers. Youth may also be on some form of pretrial release in the community.

How a youth is handled as they await the resolution of their case raises a variety of issues for state and local public safety systems as they work to fulfill a mandate to keep youth safe, and provide appropriate services for their rehabilitation.

#### **1) National standards on “jail removal” and “sight-and-sound” regulations for youth in the adult system do not apply to juveniles charged as adults.**

The Juvenile Justice and Delinquency Prevention Act (JJDP A)—the federal act which enables the federal government to promote national standards and drive national policy to reduce juvenile crime and help youth succeed—has sought to limit the incarceration of juveniles in adult jails for three decades. The Act’s “jail removal core protections” prohibits states and counties from placing youth in the juvenile justice system in adult jails, except in very limited circumstances. Under rare circumstances when juvenile justice youth are allowed to be jailed, regulations prohibit their contact with adult inmates. If states do not follow the rules on “sight and sound” regulations in managing juveniles in jails, states risk losing hundreds of millions of dollars in federal youth crime prevention funding.

The rules around management of juveniles who might end up in jail do not extend to youth who may be transferred to the adult court, and tried in the adult justice system. As state law changed, and more youth ended up in the adult system, more youth were found to be in adult jails, pretrial, awaiting the disposition of their charge.

Most states permit the pre-trial detention of youth being tried as adults in adult facilities, 10 states actually require youth in the adult system be housed in jails.<sup>20</sup> Of the 39 states that allow youth to be jailed, only 20 states have protections for youth (e.g., requirements that youth be separated by sight and sound from adult inmates), and six states have age restrictions on the pre-trial detention of youth in jails.<sup>21</sup>

National data shows that, adult pretrial correctional agencies will be dealing with thousands of youth who are under their supervision because they have been tried as adults. The most recent data show that, there are 7,220 people under age 18 in jails on any given day.<sup>22</sup> The annual number of youth who are placed in adult jails is even higher – ten or twenty times the daily average according to some researchers – to account for the “turnover rate” of youth entering and exiting adult jails.<sup>23</sup>

## 2) Where youth are held, pretrial, depends on local policies or preferences.

*“This is an extremely idiosyncratic issue; everyone is doing it differently state by state and even within counties.”—Vincent Schiraldi, Director of New York City’s Probation Department.<sup>24</sup>*

Information provided by experts in adult and juvenile corrections revealed the diverse approaches places take to managing youth, pretrial, who have ended up in the adult system through variety of pathways.

- **Virginia: Youth may be detained in the juvenile system, pretrial.** Under legislation passed in 2009, and implemented in 2010, Virginia created a presumption that youth who are being tried as adults are held in juvenile detention centers pretrial and will only be placed in an adult jail if they are found by a judge to be a security or safety threat.<sup>25</sup>
- **Oregon: Six out of 36 counties seek to hold pretrial youth in juvenile detention.** In Oregon, at-least 6 of the 36 counties take steps to hold youth facing charges in the adult system in a juvenile detention center or a juvenile corrections facility.<sup>26</sup> To encourage other counties to do so, Oregon legislators passed House Bill 2707 in 2011 to make juvenile detention facilities the default placement of youth in adult court making it more likely that youth will now be housed in juvenile detention facilities.
- **New York City: Hundreds of youth at Riker’s Island.** In a state where 16 and 17-year-olds are automatically adults for purposes there are 700 youth in Riker’s Island Jail who under the age of 18, 670 of whom are pre-trial.<sup>27</sup>

- **Baltimore, Maryland: Hundreds of youth in jail.** In a state where youth can be automatically excluded from the juvenile court if they are under 18 and commit certain crimes, in recent years, Baltimore city has had between 100 and 140 youth in the city jail. The state is currently debating whether to build a specialized facility to detain youth charged as adults while awaiting trial.<sup>28</sup>
- **Harris County, Texas: Hundreds of youth in jail.** In a state where the age of jurisdiction in the juvenile system ends at age 16, there were 198 17-year-olds held in the county jail. When juvenile under age 17 are transferred to the adult court by a judge, they are not supposed to be jailed, but sometimes are because staff are not available to transport them to another custodial setting.<sup>29</sup>

In the study “Jailing Juveniles,” pretrial experts commissioned by the Campaign for Youth Justice analyzed national databases on pretrial populations to try to learn, what was happening to youth in 40 counties where a variety of different transfer laws were used.<sup>30</sup> Findings from the 40 counties in the late-1990s showed that, of 5,000 youth transferred to the adult system, two thirds were held, pretrial, in the adult jails.

### 3) What issues can adult pretrial corrections systems face when youth are transferred to the adult court?

Pretrial systems face a number of issues, challenges and opportunities managing youth when they are transferred to the adult court, and end up in the adult pretrial corrections system. The most critical issues tend to cluster around the *safety* of young wards in the system, the *services* they receive, and how the *costs* of serving them can impact the whole public safety system.

#### a) Safety challenges

A number of different research authorities have shown, youth in an adult pretrial setting face increase risks of self-harm and abuse by other detainees. According to a BJS study in 2005 and 2006, 21% and 13% respectively, of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18<sup>31</sup> – a high percentage of victims considering that only 1% of all jail inmates are juveniles.<sup>32</sup>

Recognizing the risks to youth in jails, some jail administrators separate youth from adult inmates inside the facility—something that has implications for these institutions, and these youth.

If these youth are placed isolation, depending on the duration and the policies in place, isolation may aggravate mental health challenges that many youth bring with them into the justice system. For youth facing mental health challenges, isolation or seclusion can aggravate or cause anxiety, paranoia, exacerbate disorders, and increase their risk of suicide. Data from BJS show that 75% of all deaths of youth under 18 in adult jails were due to suicide.<sup>33</sup>

Jail administrators can face a difficult choice on this issue: They can house youth in the general population where they are at a differential risk of physical and sexual abuse, or, house youth in a segregated settings where isolation can cause or exacerbate mental health problems.

### **b) Service challenges**

Youth have specific education, treatment and health needs that adult pretrial institutions may find challenging to provide.

Even though legally required to, what data exists on the kinds educational services jails provide appropriate suggest the challenge jails may have in providing age appropriate services to the youth in their midst, particularly for young defendants that may have greater special education needs. Although nearly 30% of jail inmates under age 24 reported having a learning disability,<sup>34</sup> a BJS survey found that 40% of jails provided no educational services at all, only 11% of jails provided special education services, and only 7% provided vocational training.<sup>35</sup>

From intake processes to meals to health care, adolescents have specific needs that jails will be pressed to deliver. Youth have different nutritional requirements because they are growing so rapidly. Vision and dental health are two additional areas that change during adolescence and require special attention, an effective approach to dealing with youth would need to find ways to provide services.<sup>36</sup>

### **c) Cost Challenges for Adult and Juvenile Pretrial Systems**

The challenge for adult pretrial corrections agencies to provide age appropriate services to juveniles, and keep them safe in the context of an adult jail all can drive up the system costs for serving these youth. It is no surprise that juveniles might be a jail systems most expensive ward: their educational, behavioral health, nutritional and medical services can be more expensive, and if they are segregated, those units may cost more than to keep these youth in the general population.

During these fiscally challenging times, juvenile detention centers are also feeling the squeeze of funding cuts. Along with the higher costs that a juvenile detention center might be paying to meet a youth service and rehabilitative needs while in custody, juvenile defendants facing trial in adult court may have a longer length-of-stay. The survey of 40 counties as part of the “Jailing Juveniles” report found that, the majority of the 5,000 youth studied spent at least one month in jail, and one in five of these youth will have spent over six months in an adult jail.<sup>37</sup> As youth in juvenile detention for an offense under the jurisdiction of the juvenile justice system are more likely to be referred to community-based detention alternative, they are more likely to have a shorter length-of-stay while in pretrial custody.

In summary, while there is a definitely an increased cost for young pretrial defendants facing transfer to the adult system, the two drivers of those costs – the defendants length of stay, and the kind of services and supervision they receive while in custody—will face any

correctional administrator, *regardless of whether these youth are in a juvenile detention center or a jail.*

### **3) Can pretrial release strategies be used to rein in pretrial costs?**

There are strategies that public safety systems can use to manage the costs associated with the pretrial detention of youth awaiting trial in the adult system.

First, there may be ways to place youth awaiting adult charges on pretrial supervision, as it might work for any adult defendant that would qualify for pretrial release. While there are some youth who, because of their charge, or because of their risk to reoffend, simply would not qualify for release, of all the youth who might be detained pretrial on an adult charge, there is a group who have engaged in nonviolent crimes (such as drug, or property offenses) who might be considered. Studies of youth transferred in the 1990s found that as many as a third of youth who ended up in the adult court were there for nonviolent offense.<sup>38</sup>

Another indicator of whether the youth awaiting pretrial might be safely managed in the community may revolve around the likelihood they'll be convicted of what they were charged with.

Among the 5,000 youth from 40 counties whose initial cases were seen as serious enough to transfer them to adult court in the mid-1990s, as many as one-half of the youth prosecuted in the adult system do not receive an adult court conviction.<sup>39</sup>

Among the experts convened by NIC, one presented data on those 100 or so young defendants that were jailed pretrial in Baltimore, Maryland, awaiting trial on a charge that moved their case to the adult system: More than 60 percent of those youth charged were either not prosecuted (either because they were returned to juvenile court, or the prosecutor decided to not prosecute the case). Only 5 percent of the youth tried as adults in Baltimore in the first six months of 2009 eventually received a sentence to an adult correctional facility—the rest received probation or time served.<sup>40</sup>

Based on their offense, and based on what is known about how most youth charged with adult offenses see their cases disposed of, depending on the pretrial release laws in a given place, there are reasons to believe that significant numbers of youth could be safely managed in the community while awaiting trial.

#### **Options for corrections systems, and federal, state and local policymakers:**

- 1) Legislators and executives should review where the appropriate place is to manage youth pretrial.** In Virginia, Multnomah County, Oregon, and Los Angeles County, California, local policymakers have had an opportunity to consider the safety, service and fiscal challenges that come with managing young defendants in adult court. These jurisdictions have made flexible policies that make juvenile facilities the presumptive place where youth should be detained pretrial awaiting an adult charge, and the systems safety and security needs. Along the lines of what the

American Jail Association and the National Association of County Organizations have held as their policies, there need to be discussions among legislators and executives over the appropriate place to manage youth, pretrial. Elected officials who are responsible for the entire public safety budget should be encouraged to facilitate these discussions. The costs that a change could have on the system are an important consideration, but the fiscal impact of any change also needs to take in account the benefits of reduced recidivism, and reduced liability to government.

- 2) **Expand options for pretrial release for young defendants in adult court.** Jail and pretrial administrators can work with the courts and stakeholders to develop pretrial release options for young defendants in adult court. Mindful of the public safety issues involved in individual cases, systems may look at what barriers exist to pretrial release and supervision of juveniles who have been charged with adult offenses. Even if used for only a portion of defendants, the cost savings could be used to improve the systems ability to safely serve those youth who need to be detained awaiting trial.
- 3) **Consider case processing agreements to between criminal justice stakeholders to structure charging decisions in juvenile transfer cases.** If there are a population of youth who are being detained pretrial due to a charge that carries an adult penalty, it helps no one – not the crime survivor, the corrections system, the prosecutor, the public defender, or the courts—if scarce custodial resources are consumed by defendants who will not be convicted of those crimes, or transferred back to the juvenile system. Systems should encourage the key juvenile court actors to develop case processing agreements between stakeholders to help reduce the time it takes for a case to wind its way through the system. This will help separate the most serious cases from those that may be resolved with a plea, or a transfer back to the juvenile justice system.

## **IV. What are the issues, impacts and options facing public safety systems when youth are convicted, and committed to the adult system?**

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*“The American Correctional Association supports separate housing and special programming for youths under the age of majority who are transferred or sentenced to adult criminal jurisdiction. [The ACA supports] placing people under the age of majority who are detained or sentenced as adults in an appropriate juvenile detention/correctional system or youthful offender system distinct from the adult system.”—American Correctional Association (Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction, 2009).*

*“In DOC in Georgia there are 92 children 14-22 years old (90 children 14-17 years old). It is a nightmare to see 14-year-olds in the same population with the adults and “at risk youth.”—Derrick Schofield, Assistant Commissioner, Georgia Department of Corrections.<sup>41</sup>*

*“The juvenile justice system is the most appropriate system to hold youths accountable and receive age-appropriate and effective treatment and rehabilitation opportunities.” – The Council of Juvenile Correctional Administrators (2009 Policy Paper).*

*“Commission urges that individuals under the age of 18 be held separately from the general population.” –Prisoner Rape Elimination Act Commission (2008).*

In many states, juveniles who are convicted and sentenced in the adult court are committed to adult corrections systems. Some states have developed specialized units that segregate the youngest prisoners. In other states, a juvenile convicted and sentenced in the adult court may start and finish their term of custody in juvenile corrections, or, move to the adult general population at a certain age, or under certain conditions. Finally, in some states youth are placed in the general population.

With the vast majority of youth who are transferred to the adult system due to leave prison by their 25<sup>th</sup> birthday, how are adult correctional systems addressing the both their safety and rehabilitative needs before they leave prison, and how does that impact the entire adult correctional system?

### **1) On any given day about 3,000 youth 18 and under are in the custody of an adult prison system.**

The latest figures from the BJS show that, there are about 3,000 youth under age 18 under the custody of adult corrections systems. The data is a snapshot of the correctional population in a given day, and does not tell us how many people in adult prison are incarcerated for crimes committed before the age of 18, or how many youth started in an

adult correctional setting before age 18 and continued their sentence into their late teens and twenties. **The length of time a youth can spend in the juvenile justice system versus the adult system can vary.**

While it is hard to know what is the case on a national basis, it isn't necessarily the case that youth who are under the custody of the adult corrections system are spending more time in custody than youth in the juvenile justice system.

According to a study by the California-based Center on Juvenile and Criminal Justice, juveniles who remain in juvenile court serve longer sentences than adults with similar charges. This was especially true for youth convicted of the offense that drive commitments to both the adult and juvenile justice system: *youth sentenced to the custody of the California Youth Authority by juvenile courts for homicide, burglary, theft, rape/sex, and other offenses are confined for longer periods than those sentenced for the same offenses by adult criminal courts.* For offenses such as robbery, confinement time was equal.<sup>42</sup>

One reason this may be the case in some places is, juvenile corrections systems may be more likely to operate under an indeterminate sentencing model: the courts do not necessarily prescribe the length-of-stay to ensure that the youthful offenders get into the necessary treatment programs. When the courts need to hold a youth in custody out of a public safety concern, they may choose the juvenile court over the adult system because they can be involved in youths life for a longer period of time.

When the state Texas revised the oldest age at which the juvenile court may retain jurisdiction for disposition purposes in delinquency matters from 21 to 19, there was a reported increase in the in the number of youth tried as adults.<sup>43</sup> This suggests the length of time someone can be committed to either system relates to which system they might end up in.

## **2) There are no national standards on how to handle youth committed to the adult corrections system.**

As is the case with other areas of adult corrections, there are no national standards governing how youth should be managed and handled once they are committed to the adult system. The closest thing to a national standard – the American Correctional Associations accreditation and standards process—are a voluntary benchmark that corrections agencies can choose to participate in. While these policies call for youth to be in separate housing and to receive separate programming, unlike the JJDP, states do not lose anything if they choose to not follow these standards (other than lose ACA accreditation).

## **3) Corrections systems face challenges keeping youth safe, effectively providing for their services and supervision, and containing costs**

Adult department of corrections face similar issues to pretrial corrections in keeping youth **safe**, providing age appropriate **services**, and managing the **costs** of these youth in their systems. How public safety systems deal with these challenges vary from state-to-state.

### **a) Some adult corrections systems separate the wards, by age**

One approach corrections systems have taken is to manage the youngest wards in their system has been to operationalize the ACA standards, and keep youth safe, and provide them age appropriate services within their adult corrections systems.

In **Georgia**, the Department of Corrections changed how it handled those youth committed to the adult system. Georgia dispersed the 18-21 year-olds and the 14-18 population was moved to more modern facilities with the appropriate services to keep them safe, educate them, get them the appropriate behavioral health services to prepare them to move to the next level of custody.<sup>44</sup>

Since 1998, the **Nebraska** Department of Correctional Services has operated a stand-alone maximum security confinement facility for male youth convicted and committed as adults. Called the Nebraska Correctional Youth Facility (NCYF), the youthful offenders here range in age from early adolescence up to the age of 21 years and 0 months (to date the youngest has been 14 years, though statute allows for age 10 to be committed). Because of the prison's campus style construction, keeping the "younger" less mature youthful offender (17 and below) separated from the "older" youthful offender (18 and above) has presented safety and staffing challenges. These issues are compounded by the fact that approximately 80% of the youthful population claim gang affiliation: the correctional need to keep opposing gangs separated as well as keeping the younger and older youth separate, exacerbates educational and other programming challenges. Even though the facility manages fewer than less 100 youth,<sup>45</sup> the average annual cost to house a youth at the NCYF is nearly double the cost (approximately \$58,000 for each youth, compared to \$32,000 for the average adult prisoner). Since youthful offenders comprise less than 3% of the total prison population, the NCYF competes with resources within the overall DOC budget. Staffing and programming are often limited for working with this specialized population: Tight budget constraints often dictate programming that is designed for the "typical" adult male offender, whose average age in the Nebraska system is 33, even though studies have shown that applying adult programming to adolescents rarely results in long term, if any, positive outcomes.

In **North Carolina**, where all 16 and 17-year-olds are under the jurisdiction of the adult corrections system, five youthful offender facilities within the system manage the youngest wards. Male youth who are convicted of felonies are incarcerated in facilities separate from those housing male felons 25 and older. Male felons and misdemeanants under the age of 19 are processed and incarcerated at a separate facility, and males aged 19-25 who receive active sentences for misdemeanors may be housed in the same minimum custody prisons with adult male misdemeanants.<sup>46</sup> In North Carolina, it was reported that in general, the same programming available for adult offenders within the prison system is also offered to some degree for youthful offenders, especially in the areas of academic education and

social skills....Within the prisons that serve youthful offenders, there is limited programming which deals with mental health issues and vocational education needs.”

When youth have been separated out from the adult general population, correctional administrators can face staffing challenges, and cost differentials in serving these youth. In Nebraska, juveniles under the adult DOC supervision competed for resources within the overall budget, and there were staffing challenges having the appropriate people that could work with youth, and work with adults on the same campus.

On October 30, 2007, the **Rhode Island** General Assembly repealed a law, enacted just months before, which gave the adult system original jurisdiction over 17-year-olds.<sup>47</sup> Repealing this law returns 17-year-olds to the jurisdiction of the juvenile court. The original law lowering the age of jurisdiction was enacted as a way to close the budget shortfall, and the General Assembly approved the change reluctantly due to the state’s dire financial situation.<sup>48</sup> However, shortly after the law was passed, *legislators realized that it would actually cost more money to safely house 17-year-olds in adult facilities than it would to keep them in juvenile facilities.*<sup>49</sup> It only took a couple of months for the legislature to rectify its mistake and repeal the law. Rhode Island now stands as an example of the fact that, while intuition might suggest that moving children to adult prisons is cheaper and easier than providing them with the services that come with the juvenile system, once all factors are taken into account, housing youth in juvenile detention centers is often the cheaper (and more effective) route.

#### **b) Committing youth with adult convictions to the juvenile corrections system**

In other states, correctional administrators and executives have taken an approach to keep youth committed to the adult system by a court in the juvenile corrections system—at least, for the initial commitment.

After a suicide and a subsequent investigation that found inadequate conditions for youth, a policy decision was made by California stakeholders that the **California** Department of Corrections should enter into an agreement with the California Youth Authority to house all youth under the age of 18.

In **Oregon**, youth under age 18 are first brought to the adult Department of Corrections for intake, but are then transferred to Oregon Youth Authority: if the OYA deems that these youth can benefit from their services and have no behavioral issues, they could remain with the OYA until the end of their sentence.

Just as for the adult corrections systems, the population of youth who have been convicted in adult court can tax the resources of juvenile corrections departments. With cataclysmic budget pressures facing both California and Oregon in the last cycle, both states saw legislative proposals considered that would have reduced the upper age at which youth could be served by their juvenile corrections systems: both proposals failed to be enacted.

#### 4) Could the incarceration of juveniles in adult institutions run counter to correctional goals?

Despite the best efforts of the corrections systems that manage youth, why might young with similar offense histories and other similar characteristics reoffend more often when placed in adult institutions?

Dr. Redding in his analysis for OJJDP summarized some reasons why this might be the case, which have significant implications for corrections and public safety systems that are operationalizing these policies.<sup>50</sup>

- **Corrections systems lack age appropriate services and supports:** Youth have less access to rehabilitation and family support in the adult system.
- **Stigma:** Youth may be impacted by the stigmatization or negative labeling effects of being labeled a convicted felon.
- **Resentment:** Youth may have a sense of resentment and injustice about being tried as an adult.
- **Peer deviance training:** Consistent with the literature that youth learn criminal mores and behavior from other juveniles if they are in custody inappropriately, the experience of “peer deviance” training may be more significant than if youth are incarcerated with adults.

Among the stories that group of experts told of the youth in the adult system, one poignantly framed how, despite a systems best efforts, youth can emerge from the correctional experience worst off than when they arrived.

*“Often youth enter the system for poor behavior, but end up doing hard time, and the system exacerbates the problem. Anecdote: There was a fellow who was severely abused by his father, CPS took him away and he was further abused in a foster home. He acted out and ended up in a juvenile facility. He had PTSD and depression. For his assaultive behavior in the juvenile facility, he ended up in an adult facility in Montana state prison at age 15. He was treated with behavior modification programs (heavy medication and striped down to hospital gown) shuttled back and forth, sexually assaulted, and got involved with gangs. When he turned 18, he was on super lockdown, seriously mentally ill, and had multiple suicide attempts. There was a great deal of denial about his case, but it shows that things starts early and have a way of escalating. These children are ending up doing hard time in the harshest possible conditions that are incubators for mental illness. Some people survive the experience but many more are destroyed.”— Margaret Winter, Associate Director of the National Prison Project of the American Civil Liberties Union, Washington, D.C.<sup>51</sup>*

Another expert convened by NIC reported that youth in Maryland jails may also come out of facilities worse than when they came in, due to their contact with more serious offenders.

*“Gangs are also a big issue in facilities. Kids are coming into the Baltimore city jail unaffiliated but are forced to choose a side for protection, and they are initiated by the time they leave.”— Laura Furr, Youth Initiatives at Community Law in Action, Baltimore, Maryland.<sup>52</sup>*

Along with peer deviance training, the challenge of providing an age-appropriate approach to supervise and provide services to youth in locked custody has to take into account the new research on adolescent development that is changing the juvenile justice field. Research published by the MacArthur Research Network on Adolescent Development and Juvenile Justice provides a new basis for considering whether how youth should be managed and served in a custodial setting.<sup>53</sup>

These new series of studies find that by the age of sixteen, adolescents’ cognitive abilities—loosely, their intelligence or ability to reason—closely mirrors that of adults. But how people reason is only one influence on how they make decisions. In the real world, especially in high-pressure situations, judgments are made in the heat of the moment, often in the company of peers. In these situations, adolescents’ other common traits—their short-sightedness, their impulsivity, their susceptibility to peer influence—can quickly undermine their decision-making capacity.

A very practical implication of the different cognitive abilities of youth in a custodial setting relates to youth’s behavior while incarcerated. Studies out of Florida<sup>54</sup> that looked at the behavioral of prisoners by age found, the younger you are, the more likely you were to engage in assaultive behavior. Given what we know about adolescents decision-making capacity, and how impulsivity, peer influence and short sightedness are associated with adolescence, the phrase ‘follow the rules, or suffer the consequences’ may not work as well with this population.

### **Options for corrections systems, and federal, state and local policymakers:**

- 1) Consistent with the research, corrections systems should partner to develop an approach for juveniles and young adults that are consistent with their adolescent needs.** The data is clear that most of those youth who are sent to the adult correction system will return to the community before their mid-twenties. Given what is known about adolescent development and the needs of juveniles and young adults, public safety systems should consider developing a broader approach to curbing crime that doesn’t silo youth at age 18, and above. This will involve broader partnerships between juvenile and adult corrections systems, and a clear look at how the needs of a 24 year-old may be different than 18-year-old—and both may differ from prisoners in their 30s, and beyond.

**2) Encourage legislators and executives to consider the appropriate place to house juveniles while they serve out their sentence, consistent with the research on recidivism and reoffending.** Adult corrections systems face challenges in keeping youth safe, providing appropriate services, and doing so in a cost-effective way. In some states, juvenile corrections system share correctional responsibilities with adult systems, with an eye towards meeting their rehabilitative needs in an age appropriate matter. Executives and legislators that oversee both systems should work with corrections professionals to build partnerships so that youth who end up in the adult system can receive the most appropriate correctional response available, and ease the impact of managing this population on both systems.

## **IV. What are the issues, impacts and options facing public safety systems when youth who convicted in adult court are on probation or parole?**

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*“The juvenile justice system must offer a continuum of services which includes the appropriate resources to meet the needs of children and youth who are victims and/or offenders. Such a continuum should offer a range of services from prevention and early intervention to remedial and extended care and custody while recognizing the importance of partnerships with other systems of service delivery. The priority of this continuum should be, whenever possible, to eliminate the risk of delinquent behavior through primary prevention.... All agencies, acting on behalf of the government and involved in the life of a child or youth must accept the responsibility to provide services or assist in securing appropriate services which guide and nurture children and youth toward healthy and productive adult lives.” – American Probation and Parole Association (1996).*

When the public and policymakers debated laws that would ensure “adult time for adult crimes” for juveniles, the assumption was that these youth were the worst-of-the-worst, and required the certainty of an adult correctional setting to enhance public safety. However, 95 percent of the youth convicted in adult court will return to the community before their 25<sup>th</sup> birthday. In the OJJDP study on juveniles tried as adults, one of the reasons offered for the differential rates of offending included, the impact of a felony conviction on “reducing the opportunities for employment and community reintegration.”<sup>55</sup>

What might happen to youth after they leave custody, or what an adult probation sentence might bring, was hardly mentioned in the public debate when states changed their laws to try more youth as adults.

### **Community supervision – Corrections’ Stepchild?**

As the Pew Charitable Trust’s Public Safety Performance Project has noted, “the public’s perception of corrections most commonly centers on prisons and jails—buildings with bars, locked cells and uniformed guards. But far more offenders pay for their crimes through community sanctions, including drug courts, home detention and electronic monitoring, residential facilities with treatment, and day reporting centers.”<sup>56</sup> With, nearly 9 of 10 correctional dollars going to prisons, probation and parole frequently get the short-shrift in attention in budgetary decisions, and policy decisions on how the corrections field can change someone’s behavior. Given the lack of attention to the community supervision branch of the corrections system overall, what efforts can this system take to tailor the appropriate kind of response to the youngest probationers and parolees they manage?

## **1) Little is known on a national level about how many youth are on probation to adult community supervision agencies, and what kind of supervision or services they receive.**

There is no national information that documents how many youth are on adult probation or parole as a result of being tried as an adult, or what kind of supervision they might be receiving.

What little is known has been gathered by researchers, policymakers and advocates who have looked at the issue of on a state-by-state, city or county basis, by researchers who have conducted local analysis of particular ways youth are transferred, and where they end up after sentencing:

- **California:** Among the 400 youth who were transferred to the adult system via the state's direct file process in 2003 and sentenced to the adult court, 19 percent (79 youth) were sentenced to probation, and 34 percent were sentenced to probation with jail (139). Looking at the same figures in 2005, a third of youth transferred to the adult court by direct file were sentenced to probation, or probation with jail.<sup>57</sup>
- **North Carolina:** In a state where all 16 and 17-year-olds are under the jurisdiction of the adult court and adult corrections system, during the 2005 calendar year, 3,863 youth (3,109 males, 754 females) under the age of 18 were on probation or parole. In 2001/02, 2,832 youthful offenders entered prison and 10,206 were placed on probation.<sup>58</sup>
- **Chicago, Illinois:** 3,300 youth (age-16 and 17) over a four-year period in Cook County were tried as adults. Of these, the final disposition was known in 2,033. Where the disposition was known, of 2033 cases, 887 were disposed of by probation (43%).<sup>59</sup>
- **Portland, Oregon:** In Portland, Oregon, there are about 100 youth who are annually tried in adult court. On any given day, there are approximately 56 youth on adult probation or parole with who are there as a result of an adult conviction—the bulk of whom are on probation.<sup>60</sup>

## **2) Probation and parole agencies may not be providing age appropriate services and supervision**

*“With the adult conviction they get no services, education, employment training or health. The [juveniles tried as adults] population does not belong to anyone...neither adult nor juvenile.”—Lonnie Nettles, Director, Family Services Unit, Multnomah County Department of Juvenile Justice.<sup>61</sup>*

Experts convened by NIC to discuss the challenges corrections systems and youth face while on community supervision raised concerns that, youth under the authority of probation or parole agencies may not necessarily be the recipients of age appropriate supervision or service strategies.

### **3) Barriers to a juvenile's reentry exist for on adult supervision that require special attention?**

State and federal statutes can restrict anyone with an adult felony conviction from taking certain kinds of jobs, limit where they can live, and depending on the place the crime occurs, juvenile confidentiality provisions do not apply to adults. The "re-entry" barriers that exist for adults returning to the community after a prison term may have a particularly acute effect on juveniles, as they try to navigate the return home, and attempt to transition to adulthood.

In 2004 and updated in 2009, the Legal Action Center monograph entitled, *After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records*<sup>62</sup> revealed several facts about existing legal barriers for people with criminal records:

- Most states allow employers to deny jobs to people arrested, but never convicted of a crime;
- Most states allow employers to deny jobs to anyone with a criminal record, regardless of how old or minor the record or the individual's work history and personal circumstances;
- Most states ban some or all people with drug felony convictions from being eligible for federally funded public assistance and food stamps;
- Most states make criminal history information accessible to the general public through the Internet, making it extremely easy for employers and others to discriminate against people on the basis of old or minor convictions, for example to deny employment or housing;
- Many public housing authorities deny eligibility for federally assisted housing based on an arrest that never led to a conviction.
- All but two states restrict in some way the right to vote for people with criminal convictions.

Whether they received probation, or had some sort of blended sentence between the adult and juvenile court, the adult conviction a youth receives may lead to a longer-term impact on their ability to get a job, go to school, find housing, and leave their criminal offending behind them.

On challenge facing youth on adult supervision may be, they are required to pay the same fees and fines as adult parolees or probationers, when there also an expectation that they be in school. As one expert convened by NIC on this issue reported, "*in Texas, the probation*

*fees for an adult probation are around \$600, so 17-year-olds are dropping out of school in order to pay the fees.<sup>63</sup>*

#### **4) Probation and parole sanctions impact youth's safety, and supervision success.**

When anyone—an adult or a juvenile—are on parole or probation supervision, and they violate the terms of their release, depending on the law or the policies in that jurisdiction, that person may be sanctioned. Adult probation and parole systems may face significant challenges in having the options available to hold youth accountable, and may rely on jail sanctions as their principal vehicle for keeping youth compliant with the terms of their release. While some adult supervision systems have a range of sanctions available to them that are similar to those used in the juvenile justice system (for example, day and evening reporting centers, electronic monitoring, community service), some systems may lack these options, or may mix youth and adults in the same kinds of programs when they may have other needs. For example, which community service programs are used in both the juvenile and adult arenas, juveniles need to be in school during the day, while some adult service programs run when youth should be in school.

If a system lacks the options to hold youth accountable, they may rely on jail as a sanction, impacting overall public safety system costs without necessarily improving public safety. In Wisconsin, for example, a young woman who was on adult probation and was not meeting the terms of her community supervision agreements was jailed on a probation violation: she was arrested for stealing a bicycle from a neighbor. This 17-year-old young woman ended up being jailed for 75 days on the probation violation.<sup>64</sup>

The challenges jails and corrections system have in keeping youth safe from self-harm and abuse by other inmates has been documented elsewhere in this monograph. Through no fault of the supervision system – which may simply lack options – a jail sanction could put a youth at-risk of harm. In Connecticut, for example, a 17-year-old youth who was on probation, had their supervision revoked, and was sanctioned to jail committed suicide while being incarcerated in a facility under the jurisdiction of the adult correction system.<sup>65</sup>

#### **5) Dual jurisdiction cases can create supervision challenges**

Juvenile and adult supervision strategies can be complicated when a youth ends up dually supervised by adult or juvenile supervision systems depending on the age at which they commit their crime. In Washington, DC, there are approximately 50 youth who were committed to the Department of Youth Rehabilitation Services for a crime they committed before age 18, and based on new crime they committed when they were over age 18, are also under the supervision of the adult Court Social Offender Services Administration. Dual supervision complications can include, having more than one case manager from more than one system involved in the supervision, and decisions over which system should provide whatever services the youth might require.<sup>66</sup>

### **Youth on community supervision: A case study from the Transitional Services Unit**

In Multnomah County, the county set up a specific unit (the Transitional Services Unit) where youth who are on community supervision for an adult offense receive age appropriate services and supervision. By fostering a direct collaboration between adult probation and parole and the juvenile department, a youth under the supervision of this unit is managed by an adult probation and parole officer with specific training on working with juveniles, and can access many of the services that youth could if they were still in the juvenile justice system. This is the only known unit in Oregon where an adult probation and parole department provides age appropriate services to juveniles who carry an adult conviction. While the unit has good outcomes while working with this population (six months after they start with the unit, nine out of ten youth were still successfully meeting their obligations) the unit still faces structural challenges in working with this population. Like elsewhere, funding is a challenge: while in Oregon, probation and parole are funded by the state, because these youth are legally adults, state funds cannot be used to pay for certain additional needed juvenile services, such as mentoring, and housing. Funding for these services through TSU are paid by the county, which may represent a barrier for this kind of model being used under-resourced counties. Second, similar to the dual jurisdictional challenges facing supervision systems in other state, if a youth under TSU's supervision commits a new minor new crime, they can end up being under adult supervision with secondary juvenile convictions.

### **6) While juveniles tried as adults cross systems, funding for services may not**

As suggested by the story from Multnomah County, depending on which level of government controls juvenile and adult corrections (and both systems supervision systems), there may be challenges to paying for the service needs of youth once they cross the legal divide into the adult system. Without taking into account any cost-benefit from reduced recidivism gained by successfully rehabilitating a juvenile, their educational, employment and treatment needs may be more resource intensive, and more expensive than what is provided for under an adult probation and parole systems funding model.

According the analysis done in North Carolina that looked moving 16 and 17-year-olds into the juvenile justice system, it was calculated the cost for community services on the juvenile side were 33% higher than on the adult side. The education cost alone were 40% higher. However, part of the reason for the increased costs was due to an increased likelihood that someone under juvenile supervision would be more likely to receive services, and sanction: *“for persons who are arrested, there is a greater chance of receiving services and sanctions in the juvenile system than in the adult system....this makes the business of juvenile justice more costly, relative to the adult system.”*<sup>67</sup> In other words, because youth under juvenile justice supervision were more likely to be held accountable and served due to their risk and needs, the costs were higher to have the youth under juvenile community supervision.

Finally, among the federal funding streams that can be used to support effective re-entry strategies to support the supervision of individuals in the community, it isn't clear where youth who are tried as adults fall between the various funding streams. The various pools of funding that follow juveniles that are tied to the Juvenile Justice and Delinquency Prevention Act are tied to one being in the juvenile justice system. Under the relatively new Second Chances Act, those youth who are tried with adults will be competing amongst a huge pool of millions of adults on probation and parole supervision.

### **Options for corrections systems, and federal, state and local policymakers:**

*"The answer is community supervision of juveniles who have been convicted as adults, both probation and re-entry, using a developmental model of how these kids live their lives as opposed to how a 45-year-old does. This gives the capacity of the community, at the community level, to supervise well and with the necessary resources."*—Shay Bilchick, former Director of the Office of Juvenile Justice and Delinquency Prevention, and Director, Center for Juvenile Justice Reform, Georgetown University, Washington, D.C.<sup>68</sup>

- 1) Provide age and developmentally appropriate case management and supervision for juveniles who are on adult probation or parole.** Due to their offense and the law in a given place, a young offender in their teens may end up on an adult supervision caseload. However, a teenager's rehabilitative needs are different than those of a 30 or 40-year-old offender. Adult probation and parole systems should seek to build age and developmentally appropriate supervision strategies to ensure that the youngest probationers and parolees can receive the services and attention they need to successfully transition to adulthood, and have the best chance to avoid reoffending. Multnomah County's Family Services Unit provides an interesting model for adult probation and parole departments to consider as they seek to build successful supervision partnerships between juvenile and adult systems. Executives and legislators that oversee juvenile and adult supervision systems can play a role in helping build effective strategies to serve these youth.
- 2) Clarify which federal and state funding streams can pay for specific age appropriate services for juveniles while on probation and parole.** Without federal stimulus funds to support state and local governments and with the national recession lingering, Fiscal Years 2011 and 2012 will continue to be tough times for federal, state and local governments, and all the public safety services they support. As executives and legislators begin to scrutinize every dollar that flows through the corrections system, they should clarify how federal and state funding streams can serve youth, regardless of which supervision system they may be in. In particular, policymakers should clarify how the relatively new funding through the federal Second Chances Act can be used to meet the needs of youth moving between adult and juvenile systems, and how they can be prioritized among the pool of millions who need help to safely return home.

- 3) **To make effective supervision cost effective, state legislators and executive could consider incentivizing case management of youth through “Justice Reinvestment” strategies.** To help ease the costs of providing the right supervision for youth, if new probation and parole strategies succeed in reducing the number of youth revoked or re-arrested, a portion of the custodial savings should be reinvested to help fund these effective community supervision strategies. Fiscal incentives to improve community-based supervision have been successfully used to improve public safety and reduce costs in Ohio, Illinois, California, Wisconsin, and Oregon.<sup>69</sup>

## V. Conclusion

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**Corrections and the entire public safety system needs to focus on the successful strategies to curb delinquency, and positive youth development.**

During the 1990s, nearly every state in the nation took some steps to alter their statutes so that the youngest offenders can be more easily tried in adult court, and sent to adult corrections systems. Yet in recent years a number of states are reconsidering this choice based on the research that has demonstrated the negative consequences these laws have had on youth and public safety. From 2005 to 2010, fifteen States have made significant progress in addressing the needs of youth who are prosecuted in the adult criminal justice system. Many states – including Connecticut, Mississippi, Delaware, and Illinois—have made significant changes to laws that have had the effect of reducing the number of youth in their adult corrections systems, and realigned funding and functions within public safety budgets to serve youth in other parts of the system.<sup>70</sup> On the national level, a version of the reauthorization bill for the Juvenile Justice and Delinquency Prevention Act has included an extension of the jail protections of juveniles to youth who have been transferred to the adult system.<sup>71</sup>

The leading professional associations in the field of corrections have all encouraged legislators, executives and their members to review policies and statutes so that, young offenders can received the critical service and supervision they need, in an appropriate correctional setting.

This monograph is the first step by NIC to encourage a dialogue within our field to consider, how corrections professionals and systems can fulfill their rehabilitative and custodial mandate with one of the diverse populations they see. Over the next year, NIC will be presenting the findings of this monograph to constituents and stakeholders to seek feedback, and identify other options corrections systems and their partners have to improve they way we help youth leave delinquency behind them. As with other challenges that have faced corrections systems, NIC expects our field, and the legislators and executives who oversee us to seriously and soberly consider and choose policy options to keep youth in the adult system safe, meet their rehabilitative needs, and prepare them to return to the community, and transition to adulthood.

## Appendix I: Summary of Policy Recommendations

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This monograph includes the following options for federal, state, and local policymakers to consider

### 1. Fill Gaps in Data Collection

**Encourage more research at the state, county and local criminal justice level on the system implications of transfer.** Studies done by academics, state, county and city agencies, and nonprofit organizations that have mapped the pathway in their jurisdictions have revealed most information on why and how youth end up in the adult public safety system, what happens to them, and what the outcomes of those decisions were. States, counties and cities whose varied corrections systems are impacted by the process and outcomes of juvenile transfer should be encouraged to study these issues, and map out the pathway at the local level.

**Match resources for national research efforts with local analysis.** The best and most relevant information to policymakers on that influence policy change at the local level is conducted at the local level. Through various national justice research entities, the federal government could incentivize the collection of this research by funding research solicitations at the local level.

### 2. Revisit Policies Allowing Youth to be Held in Adult Jails Pretrial

**Legislators and executives should review where the appropriate place is to manage youth pretrial.** Jurisdictions across the country have begun to make juvenile facilities the presumptive place where youth should be detained pretrial awaiting an adult charge. Elected officials who are responsible for the entire public safety budget should be encouraged to facilitate these discussions. The costs that a change could have on the system are an important consideration, but the fiscal impact of any change also needs to take in account the benefits of reduced recidivism, and reduced liability to government.

**Expand options for pretrial release for young defendants in adult court.** Jail and pretrial administrators can work with the courts and stakeholders to develop pretrial release options for young defendants in adult court. Mindful of the public safety issues involved in individual cases, systems may look at what barriers exist to pretrial release and supervision of juveniles who have been charged with adult offenses. Even if used for only a portion of defendants, the cost savings could be used to improve the systems ability to safely serve those youth who need to be detained awaiting trial.

**Consider case processing agreements between criminal justice stakeholders to structure charging decisions in juvenile transfer cases.** Systems should

encourage the key juvenile court actors to develop case processing agreements between stakeholders to help reduce the time it takes for a case to wind its way through the system. This will help separate the most serious cases from those that may be resolved with a plea, or a transfer back to the juvenile justice system.

### **3. Appropriately Manage Youth on Adult Probation or Parole**

**Provide age and developmentally appropriate case management and supervision for juveniles who are on adult probation or parole.** Due to their offense and the law in a given place, a young offender in their teens may end up on an adult supervision caseload. However, a teenager's rehabilitative needs are different than those of a 30 or 40-year-old offender. Adult probation and parole systems should seek to build age and developmentally appropriate supervision strategies to ensure that the youngest probationers and parolees can receive the services and attention they need to successfully transition to adulthood, and have the best chance to avoid reoffending.

**Clarify which federal and state funding streams can pay for specific age-appropriate services for juveniles while on probation and parole.** As executives and legislators begin to scrutinize every dollar that flows through the corrections system, they should clarify how federal and state funding streams can serve youth, regardless of which supervision system they may be in. In particular, policymakers should clarify how the relatively new funding made available through the federal Second Chances Act can be used to meet the needs of youth moving between adult and juvenile systems, and how they can be prioritized among the pool of millions who need help to safely return home.

**To make effective supervision cost effective, state legislators and executive could consider incentivizing case management of youth through "Justice Reinvestment" strategies.** To help ease the costs of providing the right supervision for youth, if new probation and parole strategies succeed in reducing the number of youth revoked or re-arrested, a portion of the custodial savings should be reinvested to help fund these effective community supervision strategies.

### **4. Address Needs of Youth Sentenced to Adult Prison**

**Juvenile and adult corrections systems should partner to develop an approach for juveniles and young adults that are consistent with their adolescent needs.** The data is clear that most of those youth who are sent to the adult correction system will return to the community before their mid-twenties. Public safety systems should consider developing a broader approach to curbing crime that doesn't silo youth at age 18, and above.

**Encourage legislators and executives to consider the appropriate place to house juveniles while they serve out their sentence.** Adult corrections systems face challenges in keeping youth safe, providing appropriate services, and doing so in a cost-effective way.

Executives and legislators that oversee both systems should work with corrections professionals to build partnerships so that youth who end up in the adult system can receive the most appropriate correctional response available, and ease the impact of managing this population on both systems.

## **Appendix II: Attendees and Contributors**

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### **National Institute of Corrections Convening on Youthful Offenders in the Adult Criminal Justice System**

**June 18, 2010**

#### **Participant List**

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Lonnie Nettles, Community Justice Manger, Multnomah County Community Corrections, Portland, Oregon  
Patricia Puritz, Executive Director, National Juvenile Defender Center, Washington, D.C.  
Liz Ryan, President, Campaign for Youth Justice, Washington, D.C.  
Vincent Schiraldi, Commissioner, Department of Probation City of New York, New York, New York  
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